

# **Public Private Partnership Guidelines**

June 2018

## **Abbreviations**

BAFO	Best and Final Offer
BNR	National Bank of Rwanda
BOO	Build Own Operate
BOOT	Build Own Operate and Transfer
BOT	Build Operate Transfer
CA	Contracting Authority
CBA	Cost Benefit Analysis
CEO	Chief Executive Officer
EIA	Environmental Impact Assessment
EIRR	Economic Internal Rate of Return
ENPV	Economic Net Present Value
EOI	Expression of Interest
FCCL	Fiscal Commitment and Contingent Liability
GOR	Government of Rwanda
IGFR	Intergovernmental Fiscal Relations
IRR	Internal Rate of Return
LOD	Lease-Operate-Develop
LOS	Level of Services
MINECOFIN	Ministry of Finance and Economic Planning
MINIJUST	Ministry of Justice
MININFRA	Ministry of Infrastructure
MRG	Minimum Revenue Guarantee
NPIP	National Public Investment Policy
NPV	Net Present Value
PESIA	Preliminary Environmental And Social Impact Assessment
PIC	Public Investment Committee
PIM	Project Information Memoranda
PPP	Public Private Partnership

PPPSC	Public Private Partnership Steering Committee
PRM	Project risk matrix
PSC	Public Sector Comparator
PSF	Private Sector Federation
RA	Regulatory Authority
RDB	Rwanda Development Board
RFP	Request for Proposal
RFQ	Request for Qualification
RURA	Rwanda Utilities Regulatory Authority
SC	Steering Committee
SID	Strategic Investment Division
SPV	Special Purpose Vehicle
TC	Technical Committee
TOR	Terms of Reference
USD	United States Dollar
USP	Unsolicited Proposal
VFM	Value for Money

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## **1. Introduction to PPP Guidelines**

### **1.1 Introduction**

The Government of Rwanda (“**GOR**”) considers that the private sector can play a pivotal role in supporting accelerated delivery of strategic national investments via Public Private Partnerships (“**PPPs**”). PPPs can benefit the economy by providing quality infrastructure services and help in attaining GOR’s goals in Vision 2020, Vision 2050 and the Economic Development and Poverty Reduction Strategy.

PPPs are an alternative method for procuring and delivering both infrastructure assets and services. Traditionally, infrastructure developed in Rwanda has been financed by the government through its budget. Wherein, the contracting authorities procured infrastructure through the process of the law governing public procurement. Contracting authorities paid for the infrastructure works from its budget and assumed the responsibility of the asset after completion of construction. The long-term management of the infrastructure assets and its related risks were the direct responsibility of the government.

PPPs are partnerships with the private sector that enhance infrastructure delivery by leveraging public capital to attract private capital and undertaking a larger shelf of infrastructure projects. PPPs bring in the advantages of private sector expertise and cost reducing technologies as well as efficiencies in operation and maintenance of infrastructure. However, transactions involved in implementing PPP projects are complex and critical. There is a need to balance the divergent needs of the commercial private interests with the objectives of inclusive growth of the government. To achieve economically optimum gains from private participation in infrastructure projects, fair allocation of risks amongst the private and government partners and balancing of gains to both the parties is crucial. Due diligence is essential given the substantial contingent liabilities that could devolve on the GoR from such projects.

Recognizing these requirements and to facilitate PPPs, the GOR enacted LAW N°14/2016 of 02/05/2016 for Governing PPPs in Rwanda. The Law defines the types of PPP arrangements and potential sectors; identifies institutions to be involved; outlines processes for procurement of PPP projects; delineates roles for institutions; and institutionalizes governance framework for PPPs. The Law requires the Rwanda Development Board (“**RDB**”) to issue general Guidelines for procurement of PPP projects and advise the GoR on matters related to PPPs. Further, RDB has been nominated as the Secretariat to the PPP Steering Committee (“**PPPSC**”) to support the committee in discharging its functions of approval and oversight of PPP projects.

RDB has prepared this PPP Guidelines (the “**Guidelines**”) to assist ministries, departments, state owned enterprises, districts, and public officials to develop and implement PPP projects as per the PPP Law. These Guidelines also inform the private sector of the intent of GOR to systematically develop PPP projects and competitively procure private partners while ensuring transparency, fairness, nondiscrimination, and accountability of the institutions involved in the PPP process.

## 1.2 Purpose and scope of the Guidelines

The PPP Guidelines support the delivery of public infrastructure and services through PPPs in Rwanda. The Guidelines provide an overview of the concepts and procedures to be followed, and requirements to be met, for successful implementation of PPP Projects. These Guidelines should be used in conjunction with the PPP Law and Regulations, and other guidance issued periodically by the RDB.

The Guidelines have been divided into six chapters:

**Chapter 1 – Introduction:** Sets the background of the PPP Guidelines and defines the terms used in the document.

**Chapter 2 – PPP institutional framework:** Elucidates the main players in the PPP process, and delineates their roles and responsibilities.

**Chapter 3 – PPP Project preparation and appraisal process for competitive procedure:** Details the project preparation and appraisal process to be adopted by various institutions for PPP projects.

**Chapter 4 – PPP Project preparation and appraisal process for unsolicited project proposals:** Details the project preparation and appraisal process to be adopted by various institutions for unsolicited PPP Projects.

**Chapter 5 – Transaction advisors:** Explains the roles and responsibilities for transaction advisors and the process for appointing them.

**Chapter 6 – Project implementation and contract management:** Provides the procedure for project implementation and contract management

## 1.3 Definitions

For the purpose of these Guidelines, the following terms are defined:

**Bidder:** any potential participant, or participant in public procurement proceedings.

**Contingent liabilities** (“CLs”) are obligations that arise from a particular discrete but uncertain future event (i.e. one that may or may not occur) that is outside the control of the government. For CLs, the occurrence (trigger event), value, and timing of a payment may all be unknown or cannot be definitively determined. Such liabilities include guarantees on particular risk variables e.g. exchange rate, inflation, prices and traffic, force majeure, termination payments, and credit guarantees, among others.

**Contracting Authority (CA):** a public institution in charge of the PPP agreement.

**Fiscal Commitment and Contingent Liability (FCCL):** some forms of government support to PPP projects which will create fiscal commitments and contingent liabilities for GOR.

**Fiscal commitment** is a direct liability or obligation incurred by the government in support of the implementation of a PPP project. It takes the form of a defined and quantified undertaking to pay or carry a funding obligation for a feature, phase or item in a PPP project essential to its development, operation or completion. Its salient characteristic is that its quantum and timing is known and is fixed.

**PPP agreement:** is a written contract concluded between a Contracting Authority and a Partner, recording the terms of a PPP Project.

**Partner or Private Partner:** is a private party who is competent to contract a PPP agreement with the Contracting Authority.

**Project:** is a set of activities over an established timeline and budget intended to achieve a developmental objective, which is defined through outputs.

**Public Investment Committee (“PIC”):** is a national committee in charge of establishing high level strategic guidance to ensure the highest quality public investment program, including PPPs, based on adopted annual, medium, and long-term investment objectives.

**PPP unit:** is a center of technical expertise and assists line ministries and their affiliated agencies in developing and implementing projects through the PPP procurement route. Rwanda Development Board (“RDB”) is designated as the PPP unit, and it serves as the secretariat to the PPP Steering Committee. RDB is also designated as the lead negotiator for negotiations relating to a PPP agreement.

**PPP:** is a long-term contract between a public party and a private party, for the development and/or management of a public asset or service, in which the private party bears significant risk and management responsibility through the life of the contract, and remuneration is significantly linked to performance, and/or the demand or use of the asset or service.

**Project Profile Document (“PPD”):** is an investment proposal document submitted by a Contracting Authority to the PIC for obtaining its approval on a PPP project. The PPD includes basic project information, prefeasibility or feasibility study providing adequate information on the project.

**Request for qualification (“RFQ”) or Request for expressions of interest (“REOI”):** is an invitation issued by a Contracting Agency to qualify firms in the first stage of a two-stage procurement process, providing details for submitting the proposal for qualification.

**Request for proposal (“RFP”):** is an invitation issued by a Contracting Agency to shortlisted firms in the second stage of a two-stage procurement process, providing details for the submission of proposals.

**Steering Committee (SC or PPPSC):** the body in charge of approval and oversight of a PPP Project.

**Special purpose vehicle (“SPV”):** a corporate entity incorporated by a private party, specifically for the purpose of implementing a public private partnership project, and entering into a partnership agreement with relevant parties.

**Transaction Advisor:** is a person or firm or consortium of firms appointed in writing by a Contracting Authority who has or have appropriate skills and experience to assist and advise the institution in connection with a PPP project, including the preparation and conclusion of a PPP agreement

**Unsolicited proposal:** is a proposal to undertake a PPP Project that is not in response to an explicit RFQ or RFP.

**Value for money:** is the benefit from the best combination of the infrastructure delivered (quality and quantity), the price paid, and the risk retained or shared by the Contracting Authority or government.

#### **1.4 Scope of application of the Guidelines**

As provided in Article 3 of the PPP Law, these Guidelines apply to the following PPP arrangements:

1. **Management Contract**, whereby a Contracting Authority awards a partner the right to manage and perform a specific service with respect to an infrastructure facility or other asset for an agreed time period;
2. **Build-Operate-Own** or “**BOO**”, whereby a private partner finances, designs, constructs, owns and operates an infrastructure facility or other asset to provide services;
3. **Build-Operate-Transfer** or “**BOT**”, whereby a partner finances, designs, constructs an infrastructure facility or other asset to provide services and maintains it for an agreed time period after which a transfer of the infrastructure facility or other asset is made to the Government;
4. **Lease-Operate-Develop** or “**LOD**”, whereby the Contracting Authority grants a Partner a lease to operate and develop an existing infrastructure facility or other asset for an agreed time.

An Order of the Prime Minister may prescribe any other PPP arrangement.

Potential sectors for PPPs in infrastructure and services as provided in Article 5 of the PPP Law are the following:

1. **Transportation**, including roads, railways, airports, bridges, tunnels, waterways and inland ports;
2. **Energy** including water energy, gas energy, solar energy, wind energy, geothermal energy, biogas energy and peat;
3. **Social affairs**, including those related to education, culture, health, sports and leisure;
4. **Tourism**, including tourism related to history, hotels, parks and tourism attractions;
5. **Natural resources and environment**, including those related to forestry, oil and oil products, minerals, water sanitation and waste disposal;

6. **Telecommunication and information technology;**
7. Any other sectors as may be determined by an Order of Prime Minister

### **1.5 Scope of non-application of Guidelines**

As provided in Article 4 of the PPP law, these Guidelines do not apply to:

1. Contracts subject to the law governing public procurement
2. The privatization or divestiture of enterprises, assets and any infrastructure facility owned by the government.

**[Note:** *Isolated mini-grids with no off take commitment from GoR does not fall under the PPP law. They will be governed by the simplified licensing procedure from RURA*]

### **1.6 Amendments to the Guidelines**

RDB shall make amendments to the Guidelines to update information, or to expand on existing material. The latest version of the Guidelines is available on the website of RDB (<http://www.rdb.rw>).

Any query or clarifications or suggestions related to these Guidelines may be referred to the Chief Executive Officer, RDB.

## **2. PPP Institutional Framework**

This section lists the institutions and committees involved in PPP Project development and implementation along with their roles and responsibilities. Article 6 of the PPP Law, identifies the PPP Steering Committee (“**PPPSC**”), Contracting Authority (“**CA**”), and Rwanda Development Board (“**RDB**”) as public institutions with specific roles in the PPP process. In addition to these other institutions and committees, the Public Investment Committee (“**PIC**”), Ministry of Finance and Economic Planning (“**MINECOFIN**”), Ministry of Justice (“**MINJUST**”) and Rwanda Utility Regulatory Authority (“**RURA**”) for sector it regulates will also play an important role in the PPP process in accordance with other laws, rules and regulations and policies of the Government of Rwanda.

### **2.1 PPP Steering Committee**

The PPP Law designates the Steering Committee (PPPSC) in charge of approval and oversight of a PPP Project. A Prime Minister’s Order gazetted on 08/06/2017 determines the functioning of the Steering Committee.

#### **2.1.1 Composition of the PPPSC**

The PPPSC is composed of the following persons;

- The Minister in charge of Finance and Economic Planning - a permanent member
- The Minister of Infrastructure - a permanent member
- The Chief Executive Officer of RDB - a permanent member
- The Head of the CA, depending on the PPP Project under evaluation

#### **2.1.2 Roles and responsibilities of the PPPSC**

The PPPSC is empowered to approve and oversee PPP Projects. Under the PPP Law, it is specifically responsible for:

- Approving the project feasibility study;
- Approving the shortlisted bidders and the preferred bidder for a PPP project;
- Receive complaints from private partners on competitive procurement procedures, if any, and address them;
- In the case of unsolicited proposals, approving the preliminary proposal, the feasibility study of the project proposal and selected partner.
- Receive from the CA monthly and annual progress reports on the implementation of PPP agreement.

The order of the Prime Minister determining the functioning of the PPP Steering Committee, gazetted on 08/06/2017, details the functioning of the Steering Committee.

## **2.2 Contracting Authority**

The Contracting Authority (“CA”) is a public institution in charge of a PPP agreement. The public institutions that can enter into a PPP agreement include Ministries, State-Owned Enterprises, Development Authorities, Local bodies, Districts and Public Utilities.

The CA will be responsible for identifying projects in their sectors and developing them either internally or by hiring consultants. The CA will conduct pre-feasibility and feasibility studies for PPP projects, procure a private partner through the competitive procurement procedure, enter into PPP agreements and implement the PPP projects. The Contracting Authority shall appoint or nominate a Project Officer who will play a central role in the entire PPP project development process. The roles and responsibilities of the CA and the Project officer are described in the following sections.

### **2.2.1 Roles and responsibilities of the CA**

The responsibilities of the CA are to:

- Identify a PPP Project, prepare a prefeasibility study and submit it to RDB for preliminary screening of the project for procurement through the PPP route by the PPP Technical Committee ;
- Obtain approval on the Project Profile Document (PPD) (which includes the project prefeasibility study) from the PIC for conducting a full feasibility study as per article 4.4.1 of the National Investment Policy, April 2017
- Undertake the Project feasibility study and submit it to PPP SC with a copy to RDB for recommendation from TC on financial feasibility, PPP ability of the project, and assessment of FCCLs by MINECOFIN
- Obtain recommendations on the economic viability and alignment with investment priorities from the PIC in accordance with article 4.4 of the National Investment Policy, April 2017
- Submit the recommendations of RDB, MINECOFIN and PIC and obtain approval on the project feasibility study from PPP SC in accordance with Article 14 of the PPP Law
- Prepare the project bidding documents including draft PPP agreements. Obtain approval from RDB on the bidding documents
- Invite request for Qualification (RFQ), Evaluate the RFQ documents, and prepare list of shortlisted bidders or preferred bidders for approval from PPP SC
- Invite request for proposals (RFP) from shortlisted bidders, receive proposals and identify the preferred bidder

- Obtain approvals on shortlisted of bidders and preferred bidder from the PPP SC on completion of RFQ and RFP stage
- Participate in negotiations led by RDB with the preferred bidder
- Enter into a PPP agreement with the Partner or SPV
- Prepare a plan for PPP agreement management
- Issue sector-specific competition rules relating to PPP projects within its remit, in consultation with RDB and MINECOFIN
- Provide monthly and annual progress reports to the PPP SC on implementation of PPP agreement
- Manage the implementation of the PPP project
- Refer Projects to RDB, in case of renegotiation of Projects during the implementation that may require change into agreed FCCL and other fiscal parameters such as tariff

### **2.2.2 Roles and responsibilities of Project Officer at the CA**

The CA shall nominate or appoint a Project Officer who will play a key role in the PPP development process. He/ She will be a focal point for PPPs at the CA with adequate seniority and authority to lead the development of the PPP project. Ideally, the Project Officer should not be changed/ transferred during the tenure of the PPP project development. The Project Officer will report to the Head of the CA and will have the following responsibilities.

- Identify potential PPP Projects
- Undertake project preparatory works like conducting pre-feasibility and feasibility studies, preparation of bidding documents either internally or through transaction advisors
- Lead the competitive procurement process
- Represent the CA in negotiation meetings
- Coordinate with agencies and committees like RDB, like RDB, MINECOFIN, RURA, PPP SC, PIC etc. through the TC at various stages of the PPP process and obtain necessary approvals and clearances on the project.
- Monitor the services provided by transaction advisors, consultants and other advisors to the PPP project.
- Plan the implementation of the PPP project.
- Maintain the database of PPP projects in the CA and provide regular reports on the performance of the PPP project to RDB and PPP SC.



## **2.3 Rwanda Development Board**

The Rwanda Development Board (RDB) is a government agency responsible for fast-tracking economic development in Rwanda by enabling private sector growth. RDB has been nominated as the Secretariat to the PPP SC as per Article 2 of the Prime Minister's order Determining the Functioning of the Steering Committee In Charge of Approval and Oversight of Public Private Partnership that was gazetted on 08 June 2017. In accordance with this order, the RDB will support the PPP SC in discharging its functions of approval and oversight of PPP projects.

The PPP Unit will be in the RDB. Initially, the Strategic Investment Department of RDB will undertake the tasks of the PPP Unit. RDB may set up a separate department/ section in future based on the number of projects being developed on PPP basis. All submissions by the CA to the PPP SC will be made through RDB which will coordinate meetings and put up appropriate project related reports and analysis in the meetings of the PPP SC.

### **2.3.1 Composition of the PPP Unit**

The PPP Unit will comprise of a team of specialists in the area of PPPs. The unit will have officials with experience and skills in the area of PPP project preparation, evaluation of projects, financial analysis, procurement, risk management, contracts & legal and PPP contract negotiations. In addition, it is desirable that the team includes persons or experts with skills in the area of infrastructure finance, government support measures, managing FCCLs, banking and project finance for holistic development of PPPs in the policy space. The institutional arrangement of the PPP unit shall include;

- Team Leader
- PPP Analyst
- Finance experts
- Legal experts
- Procurement experts
- Communication and other experts on a nomination or deputation from other sections of RDB

### **2.3.2 Roles and responsibilities of RDB**

The roles and responsibilities of the RDB are:

- Issue Guidelines for procurement of projects through PPPs
- Support the CA in various stages of the PPP process
- Form project specific Technical Committees comprising members from relevant departments and agencies to facilitate review and approval activities in the PPP process
- Review, recommend and guide the PPP project through various stages of the PPP process

- Support the PPP SC in discharging its role as per the PPP Law and function as its Secretariat
- Function as the lead negotiator during negotiations on PPP project agreements
- Lead post contract renegotiations which may materially impact the fiscal position of the government due to the FCCLs in the project and other fiscal matters such as tariff
- Receive project progress related information/ MIS, maintain the PPP database and provide monthly and annual progress reports to the PPP SC
- Promote transparency in PPPs through disclosures and engagement with citizen groups and users
- Mainstream PPPs in Rwanda – by engaging with multilateral and donor agencies to develop tools, templates, risk management frameworks, model contract documents, capacity building, etc.
- Explore opportunities for creating project development fund to facilitate project preparatory works and create a pipeline of PPP projects
- Position Rwanda in the international markets as an investment destination for PPPs and engage with external stakeholders to deepen PPPs
- Capacity building for development of PPP projects
- Advise the government on matters relating to PPPs

### **2.3.3 Technical Committee**

The Technical Committee (TC) is a project specific committee set up by RDB to facilitate review and approval activities in the PPP process. The TC will be formed by RDB after the PIC approves the project to be developed through the PPP procurement route. The TC will act as a working group and will support the RDB to evaluate the project through various stages of the PPP process and facilitate review and approvals. The TC for a project will comprise the following members:

- TC lead, member from RDB nominated by Head, SID/ PPP Unit
- Nominated members from RDB with requisite skills in finance, procurement and legal
- Project Officer from the CA
- Nominated Member from MINECOFIN
- Any other member from other departments such as MINIJUST, regulatory authority etc. connected with the Project

**The TC shall function as per the Guidelines enclosed vide Annexure 8.**

#### **2.3.4 Roles and Responsibilities of the TC**

The TC is responsible for evaluating all projects related documents submitted to the RDB as per the PPP process and will act on behalf of the RDB. It will be specifically responsible for:

- Reviewing and recommending the PPP prefeasibility and feasibility study
- Reviewing and approving bid documents
- Reviewing and recommending the shortlisted bidders for the Project
- Reviewing and recommending the preferred bidder for the project
- Supporting RDB during negotiations with the private partner for the PPP project
- For unsolicited proposals, review and recommend on PPP project proposal, project feasibility study and support RDB during negotiations with the private partner

The members of the TC will be collectively responsible for discharging their roles and responsibilities as mentioned above. The members of the TC will also review the PPP project/ sections of the project based on their subject expertise, recommend and facilitate decision making from their respective departments. The members of the TC shall be authorized by their respective departments to undertake review of the PPP project on behalf of their departments, provide reviews, recommendations and approvals. It will be the responsibility of the member of the TC to undertake all processes within its department to provide its departments review and approval on the PPP project. The TC lead will ensure that recommendations from the members of the TC are compiled to provide a complete view on the project to the PPP Unit.

#### **2.4 Public Investment Committee**

The Public Investment Committee (“**PIC**”) is a body that approves public investments and new investments on central government level, which meet the requirements for implementation. The PIC ensures strategic planning, prioritization and coordination of investments in the economy. It also aims at enhancing the process of public investment planning, programming, and budgeting.

The PIC is chaired by the Minister of Finance and Economic Planning or, when he/she is absent, by the Director General of Finance and Economic Planning, and Secretary to the Treasury. The other members of PIC include high level representatives of key spending ministries, representatives of Prime Minister’s office, President’s office, Ministry of Foreign Affairs and Cooperation, National Bank of Rwanda (BNR), Rwanda Development Board (RDB), and Private Sector Federation (PSF), Public Investment Advisers (Public Investment Technical Team), and the Directors of the Development Planning, Budget, Macro, External Finance, Treasury, and Intergovernmental Fiscal Relations (IGFR) units within the Ministry of Finance and Economic Planning.

The Committee meets once every quarter to discuss, approve, and review public investment proposals including PPPs.

#### **2.4.1 Roles and Responsibilities of PIC**

The National Investment Policy, April 2017 includes PPPs as part of standard planning and monitoring procedures that prioritizes and plans investments in the economy. The PIC would evaluate PPP projects twice before the project gets into the procurement process. The first evaluation will be for approving the prefeasibility study for conducting the feasibility study. The second evaluation will be for recommending the feasibility study for implementation of the project to the PPP SC.

#### **2.5 Ministry of Finance and Economic Planning**

The Ministry of Finance and Economic Planning (“**MINECOFIN**”) governs the functions of finance, planning, and development cooperation for the GOR. Its mission is to encourage sustainable growth, provide economic opportunities, and raise living standards of all citizens of Rwanda.

##### **2.5.1 Roles and responsibilities of the MINECOFIN**

The MINECOFIN, through its specific arm, will be responsible for assessing the FCCLs of a PPP project. The assessment will take into consideration the direct fiscal commitments required for the project and the contingent liabilities that may arise on the government budget due to the structuring of the PPP. The key stages of review by the MINECOFIN are;

- MINECOFIN shall nominate its member to the TC. The nominated member shall be authorized by MINECOFIN to review and provide approvals on FCCLs on a PPP Project.
- MINECOFIN representative as member of TC shall review the project prefeasibility and feasibility studies and approve the fiscal envelope for a PPP project.
- MINECOFIN representative as member of TC shall review and approve the drafting of key clauses in the PPP Agreement and guarantees Agreement, if any, to ensure that its FCCLs commitments are as envisaged.
- MINECOFIN representative as member of TC shall participate in the negotiations meeting of the PPP Project.
- Post contract negotiations, MINECOFIN representative as member of TC approves the fiscal commitments and arrange for including it as a part of the budgeting process, and make provisions for contingent liabilities as per MINECOFINs policies

The MINECOFIN may deploy assessment tools to assess the FCCLs from the PPP project, its impact on government budget and comment on its affordability.

#### **2.6 Ministry of Justice**

The Ministry of Justice (MINIJUST) /Office of the Attorney General organizes and oversees the promotion of the rule of law, law enforcement and justice for all.

### **2.6.1 Roles and responsibilities of the MINIJUST**

The MINIJUST will provide legal opinion on the PPP agreement after conclusion of negotiations for a PPP Project.

## **2.7 Regulatory Authority**

Regulatory Authority (RA) is an autonomous agency, governed by respective Law, which gives it the mandate to regulate tariffs in the given sectors. Regulatory Authority plays a pivotal role between the policy maker, licensed service providers and consumers in determining and regulating tariffs charged to the users of the services. This may include agencies like RURA.

### **2.7.1 Roles and responsibility of RA**

RA being a regulator may not get directly involved in various stages of the PPP process. However, projects that envisage user charges or tariffs to be levied on citizens will need to be approved by RA. Hence, it is necessary that RA is consulted during the project feasibility study stage to assess the feasibility of levying user tariffs, method for arriving at the tariffs and procedures for tariff revisions thereof.

Specific approval from RA will need to be obtained before signing the PPP agreement for projects that envisage user charges or tariff levies to recover investments made in a PPP project, in accordance with licensing regulations of RA for the said sector.

### **2.7.2 Local Government Project Advisory Committee (LGPAC).**

The Local Government Projects Advisory Committee (LGPAC) is a body, which advises on the quality and relevance of ongoing and new projects that meet the requirements for implementation on district level.

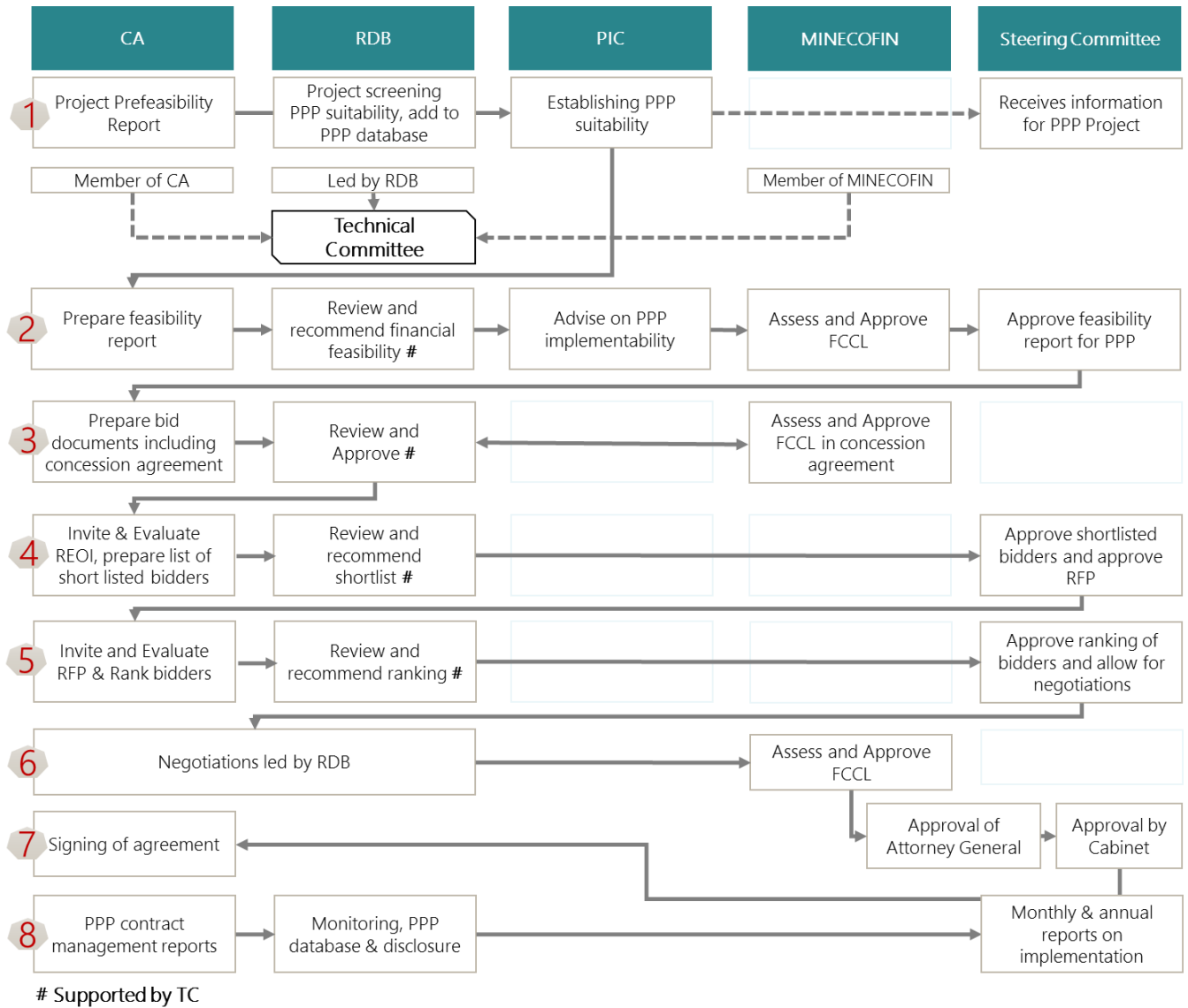
The LGPAC is chaired by a high-level representative of the Ministry of Finance and Economic Planning (MINECOFIN) and co-chaired by a high-level representative of the Ministry of Local Government (MINALOC). The Committee is constituted of high-level representatives from Provinces and key spending ministries.

With regards to PPP projects, LGPAC will be involved at the project identification and screening level. Once the project fulfills the criteria to be procured through the PPP mode, the rest of the process will follow the general process prescribed in figure 1 below.

## **2.8 PPP Process flow and institutions**

A snapshot of the PPP process flow is provided below:

**Figure 1 Process for PPP based procurement**



The above process represents the flow of a PPP Project through various stages, and roles played by the institutions at each stage. Brief descriptions of the roles are as under:

**Stage 1: Establishing PPP Project suitability**

In this stage, the CA will identify the project and prepare the project pre-feasibility study. The prefeasibility study will be submitted to RDB to conduct a preliminary screening on the project to ascertain if the project can be taken up through the PPP procurement route. RDB will deploy the Project Screening Tool and evaluate the project on various parameters and conclude on the suitability of the project for PPP. The PIC will thereafter assess the project from the perspective of public investment priorities and approve the preparation of a full feasibility study for the project. Post the approval by PIC, RDB will register the project in its database to track it through various stages of the development process. And the PPP SC will be informed of the project for its records.

**Stage 2: Approval of project feasibility study**

The CA shall prepare the detailed feasibility study for the project and submit it to RDB for its review. RDB shall form a Technical Committee (TC) for the project that will review the project on behalf of the GoR. The TC shall review the project's financial feasibility, assess whether the PPP delivers value for money, review the risks sharing arrangements and PPP structuring for the project.

The MINECOFIN representative in the TC will assess the FCCLs in the project, comment on the fiscal affordability and provide its recommendations on the project.

The PIC shall review the project from the view point of economic feasibility and strategic investment priorities of Rwanda. The project will thereafter be recommended for implementation by the PIC.

The CA shall submit the feasibility study along with the recommendations from TC, and PIC to the PPP SC for the approval. The approval from the PPP SC on the feasibility study authorizes commencement of the competitive procurement procedure for the PPP project.

**Stage 3: Approval of bid documents along with PPP Agreement**

In this stage, the bidding documents, including the draft PPP agreement, will be prepared by the CA and submitted to RDB for its review and approval. The TC will evaluate the bidding documents, the qualification criteria and the evaluation processes. The draft PPP agreement will be evaluated to confirm the risk sharing arrangements vis-à-vis the approved feasibility study and other aspects of the project. The MINECOFIN representative in the TC shall review the PPP Agreement and more specifically approve the drafting of the clauses related to FCCLs in the documents. The TC shall compile comments and submit it to the CA for its consideration and modification to the documents. The CA shall make modifications to the documents and resubmit the final bidding documents to RDB for its approval. The RDB will approve the revised documents and the CA can proceed to call for Request for Expressions of Interest or Request for Qualification for the project.

**Stage 4: RFQ and approval of short listed bidders**

The CA will invite Request for Qualification (RFQ) for the PPP project. The responses received from bidders will be evaluated by the CA based on the criteria specified in the RFQ. The CA shall prepare a shortlist of bidders who fulfill the criteria and submit a summary report to the RDB. The RDB will review the evaluation of the RFQ and submit its recommendation to the SC. The SC shall approve the final shortlist of bidders that will be invited to submit bids.

**Stage 5: RFP and approval of ranking of bidders**

The CA will release the RFPs to the shortlisted bidders, convene consultation meetings and may revise the bidding documents and reissue it to the shortlisted bidders. The CA shall consult the TC in event changes are to be incorporated in the draft PPP agreements and bidding

documents may materially change the project risk sharing arrangements, value for money assessments or the position of the government with respect to FCCLs.

The CA will receive responses to the RFP from the bidders. The CA shall evaluate and rank the bids based on the criteria specified in the RFP. The CA will prepare an evaluation report in which it identifies the preferred bidder then submit it to SC with a copy to RDB. The RDB will review the evaluation of the RFP and submit its recommendation to the SC. The SC shall approve the preferred bidder for the PPP project and the CA shall invite the preferred bidder for negotiations on the PPP agreement.

#### **Stage 6 and 7: Negotiations and signing of PPP Agreement**

The RDB shall lead the negotiations with the Private Partner. It will be assisted by the TC, in addition, officials from the Ministry of Justice, and other Public Agencies may also be invited for the negotiations by RDB. After negotiations, the MINECOFIN representative in the TC will assess and reconfirm the final FCCLs from the project. Project agreements requiring levy of user charges or tariff charged to consumers will need to be reviewed and approved by Regulatory Authorities as per licensing regulations for that sector. The PPP Agreement will thereafter be submitted to the Attorney General for its legal opinion, and then submitted to the Cabinet for approval. The CA shall sign the PPP Agreement following approval of the Cabinet.

#### **Stage 8: Contract Management**

Regular reports on project implementation will be sent to SC in prescribed formats, to enable tracking of PPP Projects, and information sharing with the SC.

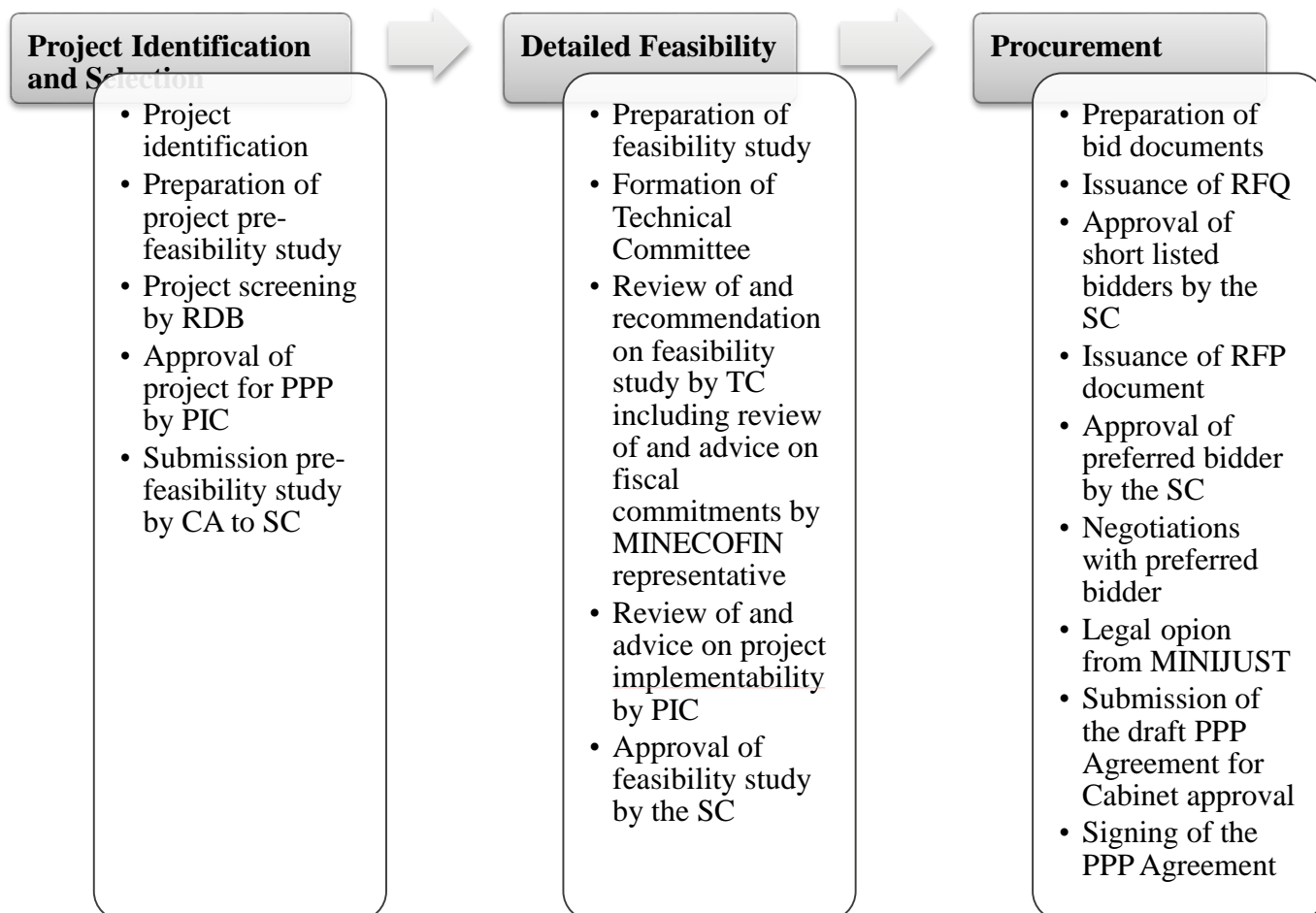
In event of post contract negotiations, RDB and MINECOFIN will need to be involved in renegotiations which may materially impact the fiscal position of the government due to the FCCLs in the project. The modifications to the PPP Agreement after renegotiations will need to be approved by the MINIJUST and Cabinet.



### 3. PPP Project Preparation and Appraisal Process

This sub-section provides detailed Guidelines for PPP Project preparation and appraisal. It defines the roles and responsibilities of each agency involved in the process. There are three main stages of the competitive procedure covering project identification and selection, project planning and procurement.

**Figure 2 Project preparation and appraisal process for competitive procedure**



#### 3.1 Stage 1: Project identification and selection

This stage of the PPP process involves identifying and selecting potential public infrastructure and services, assessing whether a project has the potential for further development as a PPP, and to obtain approval of the SC to do so. This stage covers five sub-activities.

1. Project identification
2. Preparation of pre-feasibility study
3. Project screening by RDB
4. Approval of project by PIC

5. Submission of pre-feasibility study by CA to SC

**3.1.1 Project Identification**

The first step in the process is to identify potential public infrastructure and services to be developed on a PPP basis. Selected projects should be part of the government's program of public infrastructure and services delivery, and should also be suitable for development as PPPs. The CA can identify projects by conducting a sector assessment, or select projects from national and sector level development plan, or through needs assessment for a given service. The identified project will need to be assessed by the CA for possible private sector participation in the project. The CA shall nominate or appoint a Project Officer who will play a key role in the project development process.

**3.1.2 Preparation of project pre-feasibility**

The CA shall prepare a pre-feasibility study for the project covering the following details. The template for the prefeasibility report is provided in Annexure 1.

- A concise description of the service needs and project objectives
- A detailed description and scoping of the various components of the project
- Technical viability, including key technologies and their viability, and key challenges to be overcome;
- Initial environmental and social assessment;
- Investment requirements, including preliminary cost plan;
- Revenue forecast, including sources and major sensitivities;
- Land requirements, status, timing, cost (and whether budget has been allocated) and action plan;
- Key risks, mitigation and management in a risk allocation matrix;
- A preliminary estimate of funding available both for the project and the procurement process;
- An outline of the key benefits of the project and the primary beneficiaries;
- An economic cost benefit assessment;
- Financial viability, including sensitivities and a basic financial model;
- A preliminary value for money (VFM) analysis;
- Action plan to bring the project to market, including costs and key government responsibilities such as land acquisition, etc.
- A list of stakeholders that have to be consulted both within the CA and from other government departments;

The CA will submit the pre-feasibility study and PPD to RDB for preliminary screening of the project. The RDB shall deploy the PPP screening tool to assess the project on various parameters and ascertain the suitability of the project for PPP. The template of the PPP screening tool is provided in Annexure 2 to the Guidelines.

### **3.1.3 Project screening by RDB**

The PPP screening tool evaluates a project on six parameters viz. Strategic suitability, Preliminary feasibility, Risk assessment, PPP suitability, Fiscal affordability and Institutional capacity. The tool comprises questions detailing the parameters and the user needs to record responses to the questions based on the pre-feasibility study.

The questions include – project scoping based on identified needs; technical, environmental, social, economic, financial and legal prefeasibility; risk assessment on major project risks; value for money and market appetite; government fiscal support and its justification; institutional capacity and preparedness of the CA.

The tool also assesses the project on some parameters by combining qualitative and quantitative outcomes of the prefeasibility study. These include – economic prefeasibility, financial prefeasibility, fiscal affordability, land acquisition and foreign exchange risks. The responses to the questions in the screening tool deliver results in the form of scores for each parameter, identify deficiencies, areas of improvement in the next stage of development and conclude on the suitability of the project for PPP.

RDB will evaluate the project through the PPP screening tool and comment on the suitability of the project for PPP. Projects that score ‘Moderately Adequate’ and above will be recommended for procurement through the PPP route. Projects with scores lesser than ‘Moderately Adequate’ will be sent back to the CA for reworking the project and addressing areas of deficiency indicated by the PPP Screening tool. The CA may rework the project, strengthen the areas of deficiency and resubmit the project to RDB for its consideration.

The PPP screening tool score below ‘Moderately Adequate’ represents that the project is either not well prepared and requires strengthening or is not suitable for being taken up through PPP and the CA may follow conventional procurement processes for the project.

### **3.1.4 Approval of project for PPP by PIC**

The CA will submit the project to the PIC for its approval to conduct a full feasibility study. The CA will submit a Project Profile Document (PPD) as per general planning and budgeting procedures and article 4.4.1 of the National Investment Policy, April 2017. The PPD will be complemented by the prefeasibility study and the recommendations of RDB regarding the suitability of the project for PPP.

The PIC will evaluate the project as per the guiding principles of National Investment Policy and approve the preparation of project feasibility study. The PIC will allocate funds to the CA for preparing the feasibility study.

The Project Officer may be asked to revise the pre-feasibility study report and resubmit it to the PIC, in case of comments and recommendations by the PIC. In such cases, the revised pre-feasibility report will need to be resubmitted to PIC for approval.

### **3.1.5 Submission of pre-feasibility study by CA to SC**

The CA will submit the pre-feasibility study, PPD along with recommendation of PIC to the SC for its records.

## **3.2 Stage 2: Detailed Feasibility Study**

This is one of the most important stages for implementing a successful PPP. In this stage, the CA undertakes a detailed feasibility study of the proposed project, by assessing its technical, environmental, social, economic, financial, risk, fiscal affordability, value for money, legal and marketability dimensions. This stage involves following sub-activities:

1. Preparation of the detailed feasibility study
2. Formation of the Technical Committee
3. Review of and recommendation on feasibility study by TC including review of and advice on FCCLs by MINECOFIN representative
4. Review of and recommendations on implementation by PIC
5. Approval of feasibility study by the SC

### **3.2.1 Objective of detailed feasibility study**

The detailed feasibility study allows a more informed decision on the overall feasibility of the project as a PPP, and how the project can best be structured. This stage also involves continuing market consultations, to ensure that the considerations and requirements of the private sector and financiers are understood and taken into consideration. This stage lays the foundation on which the project can be prepared for procurement. The main output of this stage is, therefore, a well-developed feasibility study for a project, leading to approval for the PPP project to be procured.

### **3.2.2 Preparation of detailed feasibility study**

The Project Officer will initiate the preparation of detailed feasibility study after the project receives an approval from PIC. The CA may appoint a Transaction Advisor to support the Project Officer in undertaking the feasibility study. The TA shall be appointed through a competitive procurement procedure as per section **Error! Reference source not found.** of these guidelines.

The feasibility study will cover several stages/ components including:

- **Needs Analysis:** A needs analysis shall be conducted to identify the main infrastructure or service issues at hand, and to define the problem or needs that the project intends to address. The needs analysis shall include:

- *Project's conformity to sector assessment and master plans:* A review of all relevant central and local government policies and long-term plans such as EDPRS and local economic development plan etc. in the sector shall be undertaken to ensure that the project is in conformity with such plans, and in line with the government's strategic and service delivery objectives.
- *Demand forecasting and user projections:* Demand forecasts and user projections shall be undertaken to understand the impact of the project. The methods employed to carry out the demand forecasting and user projections include a combination of economic studies, onsite counting, preference surveys, sampling, focus group discussions, etc.
- *Institutional settings:* This component aims to map out the institutional environment of the project, and identify the main public and private players involved in the sector, as well as their roles and responsibilities.
- *Scope of the project:* The scope of the project shall be detailed, it will include information on the physical and geographical considerations such as the land or assets to be concessioned or managed, the area of service coverage, and the range of activities during each stage of the project to be entrusted to the private sector.
- **Technical Solutions Options Analysis:** The technical component of the study shall aim to work out three aspects:
  - *Technical solution:* The objective of this component is to zero in on the most efficient technical solution to answer the needs identified. The feasibility study shall a) evaluate various technical solutions of the project by seeking individual expert opinion b) formulate a couple of alternative engineering or strategic technical solutions that can solve the problem at hand, and c) conduct a proper comparison between the different options. Based on such an evaluation, the CA shall establish the most efficient technical solution for undertaking the project.
  - *Output specifications:* The feasibility study shall undertake a technical evaluation to demonstrate the technical feasibility of the project, estimate lifecycle costs, and provide inputs needed by the environmental and social impact studies. The output of the technical study shall clearly describe the required project services in precise, verifiable, and contractible results-based terms, without imposing specific technical solutions or input activities.
  - *Project lifecycle costs:* The feasibility study shall estimate the project lifecycle cost by considering the investment and operational & maintenance costs during the lifetime of the project.
- **Project Due Diligence:** The feasibility study shall undertake a detailed analysis on various dimensions of the project including-
  - *Legal aspects:* The study shall assess all legal aspects related to the project including use and user rights, relevant financial laws and regulations, relevant environmental and heritage laws (if applicable), tax legislations, labor legislations, foreign exchange

legislations, competition legislation, building and fire codes (as applicable), zoning rights and land use regulations, list of likely project agreements, dispute settlement mechanism and legal jurisdiction, etc.

- *Site enablement:* It shall cover any aspects related to the enablement of the site of the project including land requirements, land valuation, land availability and title deed endorsements, zoning rights, resettlement needs (if applicable), and relocation of utilities.
- *Identifying environmental and disaster risk concerns:* The study shall identify all site related environmental and disaster risk aspects including, environmental impact assessment (EIA) and social risk assessment, climate and disaster risk vulnerability assessment, and Preliminary Environmental and Social Impact Assessment (PESIA) report.
- *Economic and social cost benefit analysis:* The study shall take into account the financial cash flows generated by the project, and the direct and indirect economic costs and benefits associated with the project. Based on this, the feasibility study shall include an economic and social cost benefit analysis, expressed using economic internal rate of return (EIRR) and the economic net present value (ENPV), which shall verify that the project has a positive economic impact on the society as a whole
- ***Financial Analysis and Modelling:*** The feasibility study shall include financial analysis and modelling of the project covering aspects such as project financing needs, project financing sources, project funding needs, revenue requirements, revenue sources, and affordability analysis. Based on the financial analysis, the bankability of the project shall be established.
- ***Risk Assessment and Risk Allocation:*** As a part of the feasibility study, the CA shall identify and enlist all the plausible risks associated with the proposed project. For each project risk identified, the CA shall define if the risk is to be transferred to the private partner, retained by the CA, or shared between the private partner and the CA. Based on the risks identified and the optimum allocation of each risk, the CA shall prepare a risk allocation matrix, which shall summarize all the risks associated with the project, describe each risk, and propose whether it is transferred, shared, or retained. The CA shall also ensure that the study includes an expert-assessed Project Risk Matrix (PRM) that quantifies the liabilities associated with the recommended project configuration and proposes how these liabilities will be managed and the funding requirements.
- ***Procurement Options and PPP Structure Analysis:*** The feasibility study shall examine various options for procuring and structuring the project, resulting in the recommendation of a preferred option. The comparison shall include a traditional procurement option and one or several PPP options. Each option shall be evaluated against parameters such as Value For Money (“VFM”), affordability (for users and the public sector), fiscal impact, impact on public sector borrowing including any contingent liabilities, manageability for the CA, and preliminary market sounding amongst potential operators, developers and financiers.

- **Project Agreement Terms:** On the basis of the PPP structure adopted, the key heads of the terms of the project agreement shall be drafted, including a minimal description of the roles and main responsibilities of the parties, and an outline of the payment mechanism. These key heads of the terms shall be compiled into a project agreement term sheet.
- **Project Implementation Schedule:** The CA shall prepare a project implementation schedule detailing key roles and responsibilities of the public and private entities, and timelines for the deliverables. The CA shall support the implementation schedule by providing:
  - Description of measures that the CA intends to take, to ensure that sufficient human and financial resources will be available to manage the procurement process
  - Description of measures that the CA intends to take to ensure that there will be sufficient market appetite for the project
  - Plan for obtaining regulatory or licensing approval from relevant authorities, if required
  - Composition of the proposed procurement team
  - Terms of reference for the appointment of a TA, if required
  - Definition of the selection criteria (profile of the private partner or eligibility criteria)
  - Definition of the main contract award criteria
  - Description of the proposed bidding procedure (phases of the bidding procedure, indicative timing)
  - Description of the manner in which the bidding procedure will be coordinated with approval procedures.

A checklist for key components of feasibility report is provided at Annexure 3. The CA may also include additional aspects of the project if needed.

CA shall submit the detailed feasibility study to the Technical Committee through RDB for its review and recommendations.

### **3.2.3 Formation of TC**

RDB shall form a Technical Committee (TC) for review of the project submitted by the CA. RDB shall request relevant institutions for nominating a member to TC for the given project.

### **3.2.4 Review of and recommendation on feasibility study by the TC**

Upon receiving the feasibility study from the CA, RDB with assistance from the TC, shall review and provide its recommendations on the feasibility study of the project. The areas of review by the TC shall include:

- Scoping of the project
- Selection of the project structure

- Obligation of the parties
- Risk identification and its mitigation measures
- Financial feasibility and project return estimates
- VFM analysis
- Proposed contractual arrangements
- Bidding strategy and eligibility criteria

In parallel, the RDB will also call for comments from the Regulatory Authority (RA) if the project involves levy of user charges or tariffs on citizens in accordance with licensing and regulatory requirements for the sector.

#### **3.2.4.1 Review and advice on FCCLs by MINECOFIN**

The member of TC representing MINECOFIN will comment on the FCCLs arising from the project, comment on the fiscal affordability and recommend the affordable level of direct fiscal commitments and contingent liabilities. He/ she will follow internal processes of the MINECOFIN and obtain necessary approvals from MINECOFIN for the FCCLs in the project. He/ she shall submit the assessment report to the TC through RDB for compiling recommendations to support the SC in its decision making.

For review of FCCLs in a project by MINECOFIN, the following information shall be submitted by the CA. The information should be provided in electronic copies of excel spreadsheets:

- **Economic evaluation:** A cash flow model that includes the following elements and allows the calculation of the IRR:
  - Project costs (investment, operation and maintenance)
  - Revenue from users and government payments
  - Depreciation
  - Results before and after taxes
  - Underlying assumptions considering for developing cash flow model
- **Financial evaluation:** A cash flow model using the same data as the pure project evaluation, but including:
  - Financial costs
  - Debt payments

The model building for above involves parameters that must be taken from the financial markets such as: the cost of equity, debt and other instruments, terms and conditions affecting rate resets, and some others relating to decisions of the government such as: requirement of minimum equity, timing of equity, provision of support and guarantees such as minimum



revenue guarantee (MRG)s, demand guarantees, credit guarantees, availability based payments, and others that might have an effect on costs.

The fiscal risk assessment by MINECOFIN shall include the following:

- Review of the expert-assessed Project Risk Matrix (PRM) paying attention to the probability, timing and impact of project events associated with each of the key identified risks. For each project, a PRM shall be submitted by the CA that contains information on:
  - Risk and its description;
  - Expert’s estimate of the probability that the risk will be realized;
  - Expert’s estimate of the impact of the risk as a percentage of the base;
  - The base or amount;
  - Most likely timing of the risk event;
  - Cost of the risk in NPV terms;
  - Risk distribution between public and private parties in terms of percentage of costs borne;
  - Distribution of cost of the risk between parties in terms of NPV amount; and
  - Mitigation of identified risks
- MINECOFIN-Debt Unit shall also review the valuation of guarantees and calculation of estimated payments as per Annexure 5.
- Assess the government’s fiscal capacity to make the estimated payments; MINECOFIN – Debt unit shall, from a budget priorities/ constraints point of view, check the availability of appropriate liquidity provisions against the potential funding or government support requirements.
- In ensuring the general sustainability of the fiscal support, MINECOFIN shall further assess if the PPP project is within any caps or limits that may have been prescribed by government for FCCL arising from PPP projects.
- If the MINECOFIN finds the fiscal risks of the project to be in order, it will, provide its recommendation, with clear and detailed reasons with respect to all the parameters discussed above, and return it to the RDB for further processing and submission to the SC for approval. The RDB while submitting its recommendations shall specifically ensure that the MINECOFIN’s report is also included in its submissions.
- The MINECOFIN shall return the proposal to the RDB and CA where:
  - It requires more information;
  - Is of the view that the PPP project, as structured, may result in fiscal impacts that are not affordable to the government;

- Is of the view that identified fiscal impacts can be reduced by better structuring of risk;  
or
- Perceives the proposal to be deficient in any other way.
- In returning the proposal to the RDB/CA, the MINECOFIN shall give clear comments on the deficiencies it has noted in the PPP project and include recommendations for improvement.

### **3.2.5 Review of detailed feasibility study and recommendations on implementation by PIC**

As per the National Investment Policy, April 2017, approval of PIC is necessary on the detailed feasibility study based on economic and strategic public investment considerations. The CA shall submit the PPD comprising the detailed feasibility study, recommendations from RDB, MINECOFIN and Regulatory Authority (if required) for the consideration of PIC. The PIC shall evaluate the PPP project and recommend the PPP project for implementation based on national investment priorities.

### **3.2.6 Approval of feasibility report by the SC**

After PIC approval, the CA shall submit the feasibility report to the SC along with recommendations by PIC, MINECOFIN, RDB and Regulatory Authority for approval of the project by SC. The SC shall approve or reject the feasibility study considering the recommendations and submissions by the CA. It may ask for additional information and advise the CA on the PPP project.

### **3.2.7 Timelines for Approval**

The institutions reviewing the detailed feasibility study shall follow the time frame as described under.

**Table 1 Timelines for approval**

<b>Task</b>	<b>Time frame</b>
Review of feasibility report by RDB/TC	30 working days from the date of submission by the CA
Recommendation by PIC	On convening of the PIC
Approval of SC	On convening of the SC

### **3.3 Stage 3: PPP Procurement**

Following approval of the feasibility study by the SC, the CA shall conduct a competitive procurement that will lead to successful appointment of a private sector partner at efficient terms. If a Transaction Advisor was not appointed by the CA for preparing the feasibility study, then it may appoint one for the procurement stage. The objective of the procurement stage shall be selection of an appropriate procurement strategy, preparation of package of bidding documents for the PPP project, and approval to launch the formal procurement/bid. The sub-activities of this stage are as follows:

- **Preparation of Bid Documents**
  - Review and approval of bid documents by RDB
  - Assessment and approval of draft PPP Agreement clauses related FCCL by MINECOFIN representative.
- **Issuance of EOI/ RFQ**
  - Evaluation of expression of interest and shortlisting of bidders
  - Review of minutes of RFQ stage and recommendation by the Technical Committee
  - Approval of shortlisted bidder by the PPP steering committee
- **Issuance of RFP document**
  - Evaluation of RFP documents
  - Review of minutes of RFP stage and recommendation by the Technical Committee
  - Approval of ranking of bidders by the PPP steering committee
- **Negotiations with preferred bidder**
  - RDB start negotiations with the preferred bidder
  - Post-negotiation check of user charges by Regulatory Authority
  - Post-negotiation check of fiscal commitment by MINECOFIN
  - Obtaining legal opinion from MINIJUST
  - Approval of Cabinet,
- **Signing of the PPP Agreement**

#### **3.3.1 Preparation of bid documents**

Upon receiving the approval of the SC for the feasibility report, the CA shall prepare the bid documents, including the PPP Agreement. The bid documents shall include:

- Plan for procurement process
- REOI / RFQ

- Project Information Memorandum (PIM)
- RFP, including instructions to bidders
- Draft PPP Agreement
- Expected financial contributions or other forms of government support – a document summarizing any financial contributions, guarantees, or other government support involved in the project
- Relevant technical annexes – further technical and other detailed information on the PPP project that will be made available to firms

The CA shall submit the bid documents to the RDB for its review once they are ready.

### **3.3.1.1 Plan for procurement process**

A number of key decisions on the procurement process shall be taken by the CA at this stage. These considerations include, among others:

**Table 2 Decisions to be taken by CA on procurement process**

<b>Areas</b>	<b>Description</b>
<b>Explicit statement of affordability in RFP document</b>	<p>The CA can consider stating the affordability or budget for the said PPP project in the RFP document. This would provide direction to the bidders, as they would now be aware of the budgetary constraints, and help them to provide focused bids that provide maximum VFM.</p> <p>It would also assist bidders in having a better understanding of the output specifications, as their interpretation of the same could be widely disparate. If the CA believes that the technical expertise of the bidders is more critical in relation to lowest cost, explicit statement of affordability is recommended.</p>
<b>Bidding time frame</b>	<p>The time period required for bidders to prepare and submit bids is directly linked to the size of the PPP project being bid, and in most cases, would have a material impact on the bid quality. The bidding time frame can be determined through interaction with bidders at or during the EOI stage. This would allow the CA in better estimating and vetting the bid time frame prepared by it.</p>
<b>Issues relating to project land</b>	<p>For asset based service delivery PPP projects that involve the use of land, the said land for the projects should be selected and acquired by the CA during the PPP agreement period. The successful bidder would be required to undertake required construction on such land owned by the government. It is thus important that all information relating to the land that has been collated and analysed during the feasibility phase is made available to the bidders to the extent feasible.</p>

<b>Information relating to institutional assets</b>	For asset based service delivery project that requires use of CA assets in addition to land as mentioned above, all information relating to such assets, including their condition, maintenance schedules, etc. should be provided.
<b>Asset replacement and disposal</b>	The bidders should be required to submit details on asset replacement and disposal during the PPP project lifecycle. This would help the CA in understanding and evaluating the basis of use of assets by the private party. The RFP should require the bidders to specify the schedule of asset replacement and disposal, thereby providing flexibility to private bidders in deriving maximum value from an asset.
<b>Environmental impact assessment</b>	<p>Assessment of the projects impact on the environment is critical. The CA is required to carry out all necessary studies for environment impact assessment, in accordance with applicable laws and procedures thereof. Typically, this assessment should have been made in the feasibility phase, and key information on environmental impact and mitigation strategy should be provided to bidders at the RFP stage.</p> <p>While passing on the above information, it should be made clear to the bidders at this stage that the cost and risk of compliance with all environmental laws shall vest with the private party, and that the responsibility for obtaining approvals for environmental impact assessments will be passed on to the private party. The CA must be confident that the preferred bidder will be able to obtain the required approvals because private party financiers are expected to conduct significant due diligence on this. As far as possible, the CA should not assume any responsibility in the RFP for obtaining such approvals, although relevant facilitation to the private sector may be extended.</p>
<b>Resettlement and rehabilitation of project's affected parties</b>	A critical aspect in large greenfield PPP projects is the resettlement and rehabilitation of project affected parties. Therefore, a thorough analysis of the project's impact on third parties and appropriate strategies and plans for managing the resettlement and rehabilitation should be prepared at the feasibility stage. At the RFP stage, the roles and responsibilities of the government, CA, and the private sector should be clearly specified. International experience has shown that in large PPP projects, inadequate treatment of this issue can lead to implementation delays and often failures. It is suggested that as far as practicable, the project affected parties should be consulted, prepared, and rehabilitated at the earliest.
<b>Labour issues</b>	In case the PPP Project requires modification to existing labour or staff, the bidders should be provided with sufficient information to account for such project costs and risks. The RFP should stress on the requirement for bids to clearly outline plans for labour management in line with the requirements specified in RFP, the labour agreements and have been effectively costed. A consultative approach for developing the labour management plan, with timelines for interaction with labour, should be provided by bidders.

<b>Competition and regulatory issues</b>	Many of the PPPs may arise in sectors that are regulated by independent sector regulators, such as electricity, water and transport. It is essential that a thorough examination of applicable laws and Guidelines issued by the sector regulators is undertaken in the feasibility stage. There may also be specific procedural/ approval requirements to ensure compliance with the regulatory provisions. The CA should incorporate these procedures into the time lines in the procurement phase. Furthermore, competition laws should also be examined and appropriate procedural/ approval requirements should be dovetailed into the PPP process.
<b>Bidder's compensation</b>	The general principle is that bids are submitted at the bidder's own cost and risk. By selecting a small number of well-qualified bidders, the CA minimises total bidder costs.
<b>Shared bid costs</b>	The costs of due diligences by private parties may be significant. Where possible, and where bidders agree, survey costs may be shared between pre-qualified bidders. If the PPP project is so large that high survey costs could reduce the number of bidders, the costs could also be shared by the CA.

### **3.3.1.2 Request For Qualification (RFQ)**

The RFQ is called for gauging the interest of private partners in the PPP Project. It is the first stage of the procurement process. The RFQ document shortlists technically and financially qualified bidders with the requisite skill sets and commitment to submit bids for the project and execute the project from the universe of bidders. The shortlisted bidders will be considered for further stages in the PPP procurement process. The content for the RFQ is provided at the Annexure 6. The following parameters shall be considered while designing the RFQ document:

- **Number of pre-qualified bidders:** While pre-qualification should not be undertaken solely to limit the number of bidders to a pre-specified or targeted number, it is advisable to have at least three pre-qualified bidders to ensure competitive bidding and achieving VFM through the bidding process. Given that the costs involved in bid preparation are high, it is suggested that four to six pre-qualified bidders can be considered a good response in the RFQ stage. It is not advisable to have substantially higher number of pre-qualified bidders, from the point of view of minimizing the aggregate costs for bid preparation by the pre-qualified bidders. In the event that less than three responses are received to the RFQ, the CA should make an attempt to identify the reasons for the limited response. That may include revisiting the eligibility criteria. The CA may also consider providing a wider audience to the RFQ document or its revised version, to gauge response of private parties.
- **Bid Security:** To ensure continued commitment of private parties during the bid process, the CA can stipulate a bid security required to be submitted by pre-qualified bidders before the RFP is issued. The furnishing of the bid security by pre-qualified bidders would be a

necessary condition for them being formally identified as such. The size of the bid security<sup>1</sup> should be based on the size of the project, and the cost of restarting the RFQ stage, may be considered as an appropriate quantification.

- **Eligible participants:** Any supplier, contractor, service provider, or asset buyer can participate in the bidding process, except those private partners which have been disqualified by the RDB, the CA and all those that have been blacklisted by Rwanda Public Procurement Authority.
- **Conflict of interest:** This would cover the following entities in the bid process:
  - **Consortium partners:** To avoid any potential conflict of interest, no member of a consortium should be a member of, or in any way participate in, or be involved with (either directly or indirectly) another consortium. This restriction should be backed by grounds for disqualification of either a specific consortium member, or the entire consortium, if justifiable. However, these restrictions would not hold good in certain cases such as services of a specialist supplier, the restriction of whose participation would severely affect participation in the bid process, a general supplier or a non-core service provider, who is not a member of the consortium, and any commercial entity whose role is limited to providing credit to the consortium.
  - **Advisors and lenders:** No advisor to, or member of any consortium, should fulfill the role of arranger, lender, or lead banker to the consortium. This restriction should also be backed by the power to disqualify such members.
  - **Other participants in the procurement process:** No member of the CA's project team, including the TA, may participate in, advice, or have any interest in any bidding consortium.

### **3.3.1.3 Request For Proposal (RFP)**

The objective of the RFP stage is to select a preferred bidder based on an objective, comprehensive and transparent selection process. This is a critical phase for obtaining the best value for money by the CA. The RFP document (including the draft PPP agreement) is the formal bid document issued by the CA. Issue of RFP to shortlisted parties signals a commitment to deliver the PPP project, subject to defined hurdles being cleared. The key contents of the RFP document are provided in Annexure 6.

The CA should, at this stage, identify the key consideration in the bid process. It should identify a specific individual that will be the focal person and his/her contact details are provided in the RFP document. The specific individual should preferably be the Project Officer, who would be responsible for developing the procurement plan for the CA.

The key parameters to be considered while designing the RFP are:

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<sup>1</sup> As an international practice bid security for RFQ is generally 1-2% of project cost

**Measures to enhance the process efficiency:** The RFP document is the single most important document in the procurement process. It is therefore important that sufficient time and expertise is invested in its development. Short-listed parties expend considerable time and money on the bidding process and a poorly structured definition of the service requirement, lack of clarity about the hurdles to be met, or subsequent amendments to the RFP document, are likely to draw criticism and adversely affect time frames.

The efficiency of the process can also be enhanced by making available to bidders, all relevant information on the PPP project that the CA has, which may aid in preparing a response to the RFP document. Such information, including any analysis of legislative and regulatory impacts, feasibility studies, land use considerations, geological information, demand estimates, etc., should be made available, with appropriate disclaimers, in a data room. Bidders should be advised of the information available, and of administrative arrangements, regarding access to and use of the data in the data room.

**RFP and bidding modalities:** Identify and specify in the RFP communication about protocol for undertaking bidder due diligence. It should clearly specify the nature of information for which access is restricted.

**Interaction with bidders:** In addition to the material provided, it is likely that bidders will seek further clarification and advice during the bidding process. Bidders should be assured that appropriate procedures have been implemented to protect any information disclosed by a bidder. Generally, bidders will have two ways of obtaining feedback from the CA during the RFP phase:

- Bidders submit questions to the project team in writing, with the project team providing written responses to those questions (Q&A process).
- Bidders participate individually or collectively in structured workshops involving the project team and other project stakeholders if necessary. For complex PPP projects, it is suggested that a structured workshop be adopted. It is also recommended that collective interactive workshop sessions be adopted by the CA.

**Probity measures:** Before commencing the RFP stage, it is recommended that the CA once again reviews the processes and procedures laid down in the RFP, to ensure transparency and integrity of the procurement process. It is important that the process should withstand all probity issues.

**Identify and implement ethical practices:** To prevent any corrupt practices, or the perception of any fraudulent transaction, the project officer/ the CA should clearly lay down an anti-corruption policy, which would be applicable to both the project team and the bidders. The procurement plan developed by the project officer should also have necessary safeguards such as:

- **Disclosures:** All members of the project team, TA and bid evaluation committee must disclose any potential conflict of interest between their personal interest and the project. The project officer should take necessary action to move such officers to another



position, wherein his conflict of interest would not impact, or be perceived to impact the project.

- **Code of conduct<sup>2</sup>:** All members of the project team, TA and bid evaluation committee are required to sign a code of conduct which would require compliance on a number of ethical issues that may impact the bid process and, in turn, the project. This code of conduct should also be signed by pre-qualifying bidders, and the RFP document should require that the signed copy of the code of conduct is submitted along with the bid as part of the minimum eligibility criteria.
- **Internal and external audits:** The project officer should provide for incorporation of external and internal audits of the bid process against the procurement plan. The project officer should maintain the documentation for key events of bid process and key decisions taken during the bidding process. The emphasis needs to be on compliance of processes.
- **Structured oversight system:** An individual other than the one who prepared the document should review all documentation. A list of prohibited or blacklisted suppliers who are not allowed to bid for any governmental or institutional bids during the specified period should be maintained and referred to. Measures for maintaining security of information and documentation should be identified.
- **Output specifications:** These specifications are based on the detailed feasibility study and describe all required outputs and timelines. These specifications will form the basis of service level outcomes in the project. These details will be incorporated in the PPP Agreement.
- **Payment mechanism, incentives, and penalty clauses:** Suitable payment mechanism and incentive/penalty regime must be included in the RFP. This will include the type of payment arrangement, mechanism for penalizing partial or complete performance failure, deductions for non-availability, and mechanism for dealing with changes in service requirements.

#### **3.3.1.4 Draft PPP Agreement**

The draft PPP Agreement section lays down all legal requirements for the creation of a PPP Agreement. It involves all shareholding agreements (where applicable), corporate governance requirements, and disclosure regarding the makeup of bidders. This should specify the roles, rights, responsibilities, obligations, recourses, dispute resolution, and other related aspects of the contractual framework of the PPP, for all project participants. The risks involved, and its mitigation measures, are provided in the draft PPP Agreement, for smooth implementation of the PPP Project. Draft PPP Agreement is issued to the bidders along with the RFP document.

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<sup>2</sup> *Template provided at Annexure 10 – Template for Code of Conduct & Declaration of Interest of bid evaluation panel*

### **3.3.1.5 Review and approval of bid documents by the Technical Committee**

The TC shall review the bid document submitted by the CA. The MINECOFIN representative in TC shall review and approve of drafting of the clauses related to FCCLs. The TC shall also submit the documents to the Regulatory Authority for its review and recommendation for drafting of user charges / tariff related clauses, if required.

The TC shall review the bid documents for:

- Design of the bid documents and coverage of key parameters;
- Time frame and process of bidding;
- Appropriateness of the qualifying criteria;
- Defining the bidding parameters;
- Bid evaluation process;
- Probity of bidding document;
- Transparency in process;
- The PPP agreement, for
  - Provisions for consortium
  - Obligation of parties
  - Risk allocation and mitigation measures
  - Events of default and its treatment for resolution
  - Payment mechanisms
  - Execution standards
  - Performance standards
  - Transparency and probity of process
  - Other standard clauses in an agreement.

The TC shall provide its comments and compile comments from MINECOFIN and RA and submit it to the CA for its consideration and modification to the documents. The CA shall make modifications to the documents and resubmit the final bidding documents to RDB for its approval. The RDB will approve the revised documents and the CA can proceed to call for Request for Qualification for the project.

### **3.3.2 Issuance of RFQ**

The CA shall invite requests for expressions of interest after receiving approval from Technical Committee on the bidding documents. The dissemination of information about the RFQ and the distributing of the RFQ document should be based on the procurement plan prepared by

the CA. The CA shall advertise the RFQ in the form of a specific procurement notice in the following manner:

- In at least one newspaper of wide and general circulation in the Rwanda,
- In any international newspaper, if required,
- In the CA's website and
- Additionally, may advertise in well-known technical magazines or trade publications.

The notification of the RFQ shall be done at the same time as the advertisement in the local newspapers, on websites of CA and any other means of communication by the CA giving sufficient time to enable prospective Bidders to obtain RFQ documents, prepare, and submit their responses.

These advertisements should call on interested parties to collect copies of the RFQ document from the CA and/or download the same from its website. It may include an open briefing session for potential bidders to introduce the PPP project and stimulate private sector interest. These public briefings should not communicate any information that is not present in the RFQ documents.

#### **3.3.2.1 Receive queries and issue clarifications**

The CA shall accept any request for clarification by the bidders that is received by the procuring entity within two weeks prior to the deadline for the submission of applications to pre-qualify.

The responses by the CA shall be given within three working days so as to enable the bidders to make a timely submission of their application to pre-qualify. The response to any request shall, without identifying the source of the request, be communicated to all bidders to whom the CA provided the RFQ documents. It is also recommended that the clarifications be posted on the CA's website for easier access. If required, the CA could also consider organizing a pre-bid conference wherein the issues raised by the bidders could be collated and addressed. However, this activity should be in addition to the written communication to the bidders as mentioned above.

#### **3.3.2.2 Evaluation of RFQ applications and shortlisting of bidders**

Based on the bids received, the CA shall evaluate the RFQ applications and prepare a shortlist of qualifying bidders. The responses received to the RFQ document should be evaluated based on the evaluation criteria specified in the RFQ document. The CA shall submit the list of shortlisted bidders along with a summary report of the evaluation process to Technical Committee for its review and recommendation to the SC.

#### **3.3.2.3 Review and recommendations by the Technical Committee**

The TC shall review the shortlist of qualifying RFQ applications based on which it shall provide its recommendations to the SC. The evaluation by TC shall include the assessment of the RFQ process, review of evaluation of the RFQ applications by the CA, the principle of

transparency and objectiveness in entire process, etc. The Technical Committee will submit the list of shortlisted bidders and summary report along with its recommendations to SC for approval of the final shortlist.

#### **3.3.2.4 Approval of shortlisted bidders by Steering Committee**

Based on the recommendation of the Technical Committee, the SC shall provide its approval to the final shortlist of bidders that will be invited to submit bids.

#### **3.3.3 Issuance of RFP document**

After the SC's approval, the CA shall issue the RFP to the approved final list of bidders shortlisted at the RFQ stage. The CA should keep all communication with pre-qualified bidders transparent and formal. The RFP prepared as elaborated in Section 3.3.1.3 sent to all pre-qualified bidders at least two weeks prior to the organization of a compulsory bidders' conference.

The notification shall indicate the terms and conditions under which bid documents shall be obtained, as well as the date, hour and place for latest delivery of bids by the Bidder, and of the bid opening.

Applicants who are not successful in the pre-qualification shall be accordingly informed by the CA, within one week after receipt of all the required approvals to the pre-qualification. Only pre-qualified bidders are entitled to participate further in the procurement proceedings. The applicants may be allowed to lodge request for reconsideration till the SC approves the list of shortlisted bidders. Further the CA shall, upon request, communicate to participating bidders who have not pre-qualified, the grounds thereof. But the CA is not required to specify evidence, or give reasons for those grounds.

The CA shall make available to any member of the general public upon request, names of all bidders who have pre-qualified. It is suggested that the names of the pre-qualified bidders be posted on the CA's website for easier access and public information.

##### **3.3.3.1 Bidder's conference**

For large scale, complex, or greenfield PPP Projects, it is strongly recommended that the CA organize a bidders' conference to discuss the proposed RFP. The conference will allow qualified bidders to provide feedback on the structure of the project, encourage stakeholders' buy-in, and improve the content of the RFP document.

The bidders' conference could take the form of a presentation by a designated officer/ Project Officer of the CA, and a question and answer session. Only the issues that are raised on the day of the bidders' conference and those received through letters / Fax / Emails may be considered by the Project Officer in making amendments to the RFP. The grounds upon which the RFP is amended should be in the interests of all bidders and the CA. The CA shall designate an officer responsible for overseeing proceedings during the bidders' conference in order to ensure

transparent and fair adjudication of issues. Clear records should be kept explaining reasons for including or excluding bidder’s suggestions during the conference.

The CA may revise the bidding documents and reissue it to the shortlisted bidders. The CA shall consult the TC in event changes are to be incorporated in the draft PPP agreements and bidding documents that may materially change the project risk sharing arrangements, value for money assessments or the position of the government with respect to FCCLs.

**3.3.3.2 Evaluation of RFP Documents**

The CA will receive bids from the bidders. The CA shall evaluate and rank the bids based on the criteria specified in the RFP. The evaluation and ranking of bidders shall be submitted to the Technical Committee for its review and recommendation and submission to SC for approval.

The evaluation of bids received is an extremely critical stage of the PPP Project lifecycle. The Project Officer might be supported by the TA for evaluation of proposals. To ensure fairness and transparency in the process of selection of the preferred bidder, the CA should ensure that:

- The evaluation criteria, processes, and timelines are clearly stated in the procurement plan, prior to the date of submission of bids.
- All processes and procedures followed comply with the relevant regulatory and legal requirements.

**Preliminary Activities**

***Check for completeness of the proposal***

The team should check the proposal for completeness. That would entail checking the proposal to ensure that all documents listed in the RFP document, and otherwise required, have been submitted. The sign off sheet should list the reference to its place in the RFP, a brief description of the document, and whether it has been included. A possible format for sign off sheet on preliminary activities is as below:

**Table 3 Preliminary work – completeness check sign off sheet**

<b>RFP Reference</b>	<b>Description</b>	<b>Document Included (Yes /No)</b>	<b>Proposal Reference</b>	<b>Cross Reference</b>	<b>Comments by bidders</b>

***Confirmation check of the proposal***

A conforming bid would be one that meets all the minimum essential requirements of the RFP document. The Project Officer should ensure that only conforming bids should be evaluated further. Hence, care must be taken by the team to review all bids received to check for conformance. The CA should maintain a conformance sign off sheet, on similar lines of the completeness sign off sheet.

## **Detailed Analysis**

Bids that meet the completeness and conformance checks will be evaluated in detail. The various elements to be covered in this analysis include:

### ***Evaluation of legal aspects of the proposal***

The legal evaluation focuses on two areas – a) to undertake a legal due diligence on the bidder, including its structure, legal status, and status of individual firms, and b) to evaluate the comments/ modifications of bidders on the draft PPP agreement. This includes: capturing all marked up amendments to the PPP agreement, assessing the mark-up against the risk matrix prepared in the feasibility study, capturing the VFM implications that were determined in the feasibility study and commenting on them, and working with the financial evaluation team to assess VFM on issues not identified in the feasibility study.

It is advisable not to prepare scores for legal evaluation. However, legal evaluation should be used to provide notes requiring resolution, and refining the risk matrix and VFM assessment, in conjunction with the financial evaluation team.

### ***Evaluation of technical aspects of the proposal***

Technical elements of the proposed service delivery project should be reviewed by the CA. A due diligence of the proposed solution should be undertaken to gauge the extent to which the solution can realistically be delivered within the promised timeframes. A check of the technical specification of the proposal against those provided by the CA in the RFP should be undertaken to identify any discrepancies, and ensure that the projects meet some pre-specified service delivery standards.

The design, development and operational parameters should be analysed to ensure that the proposed solution meets the service requirements of the CA and adds benefit to the proposed project. The Project Officer should assess the VFM impact of the project and compile a list of questions that need to be answered if the bid were to be awarded.

For each evaluation criterion determined, the evaluation should be based on a scoring scale. For example, a 10-point scale could be considered, with the best bid getting a score of 10, or ‘far exceeds requirement’, 8 – ‘exceeds requirement’, 6 – ‘meets requirement’, and 4 – ‘below requirement’ and so on. The rating of all criteria should be applied to pre-determined weightages for each of the criterion.

It should be noted that each technical evaluation should provide:

- A weighted score
- A report on the number of ‘inadequate’ ratings or inadequacies. This means that a weighted score that has some overall respectability should not disguise a number of inadequacies.
- Notes requiring resolution

### ***Evaluation of financial aspects of the proposal***

The evaluation of the financial proposal is not simply confined to assessing the cost of the project, but is a more complex process. This analysis would entail a review of the project cost over its entire lifecycle, structure of bidding person or firm or consortium, project funding pattern, and undertaking the VFM assessment of the proposal. The Project Officer shall assess:

- Affordability
- Certainty of project costs (development and operational)
- Certainty, nature, and costs of funding
- Project participants and overall structure
- All items omitted by bidders from the financial model
- Project's VFM
- Project's bankability, which is a function of the consortium's composition, structure, risk distribution, and funding plan.

The Project Officer should evaluate the assumptions used in calculation of project costs in relation to the calculation of the public-sector comparator in the feasibility phase. That would ensure an effective comparison in determining the actual VFM of the bids. A sensitivity analysis of the key assumptions should also be undertaken.

Each financial evaluation should provide:

- A composite score for financial evaluation (this would be undertaken for price scores)
- Notes explaining or showing matters requiring resolution.

### ***Evaluation of price of the proposal***

Assessment of the financial proposition in each bid is a key component of the evaluation. However, the financial considerations are only one element of a well-balanced evaluation process. In PPPs, price is closely linked to qualitative elements. The RFP prescribes the form in which price is to be presented, but the price offered by the bidder must be scrutinised with the financial solution evaluation, before price points are allocated.

### ***Preparation of bid evaluation report***

The evaluation should generally result in the selection of one preferred bidder and one or more reserve bidders. The Project Officer then develops the evaluation report with all supporting scores sheets and noting. The evaluation report shall be submitted to the Technical Committee for its review and recommendation for approval by the SC. The key contents of the bid evaluation report are provided at the Annexure 7.

In the event that no single bidder seems to emerge as the clear choice as preferred bidder, the Project Officer could consider a Best and Final Offer (BAFO) process. This process would require a re-bid and re-evaluation, and is only to be considered as a last resort.

In the event the RFP process results in the submission of only one bid and the bidder fulfills the evaluation criteria set forth in the RFP, the CA may recommend the bidder to execute the project and submit an evaluation report for approval by SC.

### **3.3.3.3 Review and recommendation by the Technical Committee**

The TC shall review the ranking of the bidders and provide its recommendations to the SC. The TC will review the evaluation report prepared by the CA for completeness and comprehensiveness of analysis. The TC should be completely satisfied that the scoring of the various criteria is substantiated by hard facts. It should prepare and present its recommendation on the way forward. It should also compile the project evaluation notes and reports into a single recommendation on the process and outcome that would be passed on to the SC.

### **3.3.3.4 Approval of ranking of bidders and for negotiations by SC**

Based on the recommendations of the Technical Committee, the SC shall approve the preferred bidder for the project and approve for negotiations of the PPP agreement to start.

### **3.3.4 Negotiations with preferred bidder**

After receiving the approval of the SC, the RDB, shall enter into negotiations with the preferred bidder. The RDB shall lead the negotiations of the PPP agreement, with the support of the TC. Preparation for the initial negotiation meeting will include:

- Outlining the objectives of the negotiations, clarifying any gaps, misunderstandings, terms and conditions;
- Preparing a schedule for the negotiations that ensures bids do not expire prior to PPP agreement signature;
- Devising a strategy, anticipating the private party's position, and predefining responses; and
- Sending an invitation to the preferred bidder for a negotiation meeting. Information on the names and positions of the bidder negotiation team should be requested ahead of time.

### **Managing negotiation meetings**

At the initial negotiation meeting, time should be spent on introductions, opening statements, and on creating a climate of trust and cooperation. This will be an important investment in fostering a good working arrangement.

In ensuing meetings, the negotiation team should define outstanding issues, identify shared and conflicting interests, and jointly refine the agenda to include action items. The TC shall keep track of the evolving contract documentation.

During the negotiation process, the TC should concentrate first on common and easily resolvable issues to establish a collaborative process. Options placed on the agenda should be



selected by using mutually agreed upon, objective criteria, based on valid concepts, standards, and principles.

Final negotiations might require compromises so that both parties see the settlement as the best possible option under the circumstances. As commercial details become clearer, the contract management team must be prepared to bridge affordability gaps as well reduce output specifications to keep the project affordable, provided that quality and VFM are maintained.

Once terms have been agreed upon, details of the negotiated points and resolutions must be recorded, and an agreement made to follow up on outstanding issues in the contract management plan so that the negotiated terms and time frame are not impacted.

The RDB shall produce recommendations of the meetings, and shall also obtain the written confirmation from the Preferred Bidder, that the same are a true and accurate record of the negotiations held. Thereafter the recommendations shall be submitted to the CA.

The RDB's recommendations may be one of the following:

- Proceed with contract award to the Preferred Bidder, incorporating the agreements reached during negotiations
- Revise the negotiation objectives and hold further negotiations, or
- Terminate the negotiation with the preferred bidder.

Where the RDB recommends rejection of the Bidder, it may also, where appropriate, recommend inviting the next ranked bidder for negotiations. The CA may:

- Approve the recommendations;
- Request further negotiations on specific points;
- Reject the recommendations with reasons; or
- Cancel the negotiations in their entirety.

The results of any approved negotiations shall be specified in a letter of bid acceptance and incorporated in the draft PPP Agreement. Where negotiations are opened with the next ranked Bidder, the procuring entity shall not reopen earlier negotiations, and the original bidder shall be informed in writing, the reasons for termination of the negotiations.

A preliminary schedule for signing the PPP Agreement shall then be established. Once the negotiation is completed, the RDB shall prepare the final PPP Agreement. The MINECOFIN representative in TC shall re-confirm the FCCLs.

#### **3.3.4.1 Post-negotiation checks of user charges by RA**

The RDB shall submit the negotiated PPP Agreement to the Regulatory Authority in cases where project agreements require levy of user charges or tariff charged to consumers. These agreements will need to be reviewed and approved by RA as per licensing regulations for that sector.

#### **3.3.4.2 Post-negotiation checks of fiscal commitments by MINECOFIN**

The MINECOFIN representative to TC shall assess the agreement and the final FCCLs arising out of the PPP Agreement, and provide its recommendations to the RDB. MINECOFIN will provide a budget for managing the fiscal commitments for the project.

- Based on the final project structure and the preferred bidder submission, MINECOFIN shall check for any changes in the project variables during the process of procurement or negotiation, and their effect on the fiscal impact of the project, as well as for any change in macroeconomic or other variables affecting the fiscal capacity of the government.
- The MINECOFIN shall return the project report to the CA if it finds that:
  - There has been a substantial change (either introduced by bidders' proposals or the CA) in the FCCL, making the project unaffordable;
  - The fiscal situation of the government has changed;
  - It requires more information;
  - The fiscal impact can be reduced by better structuring of risk; or
  - If the project structure is deficient in any other way.
- In returning the report to the CA, the MINECOFIN shall give clear comments on the deficiencies it has noted and include recommendations for improvement.
- If the MINECOFIN finds the fiscal risks of the project to be in order, it will provide its approval giving clear and detailed reasons for its decision and return it to the CA for further processing.

On approval of MINECOFIN, the PPP Agreement shall be submitted to the Attorney General by the RDB.

#### **3.3.4.3 Obtaining legal opinion**

Before the contract is sent to Cabinet for approval, the GoR should have a legal opinion provided by the Attorney General.

#### **3.3.4.4 Approval of Cabinet**

Based on the recommendations of the RDB, MINECOFIN and the Attorney General's legal opinion, the PPP Agreement will be submitted to the Cabinet for approval before it can be signed.

#### **3.3.5 Signing of the PPP Agreement**

After receiving the approval from the Cabinet, the CA shall sign the PPP Agreement with the private party.

### **3.3.6 Timelines for PPP procurement**

The institutions may follow the below mentioned timeline for achieving efficiency in PPP Project procurement:

**Table 4 Timelines for PPP procurement**

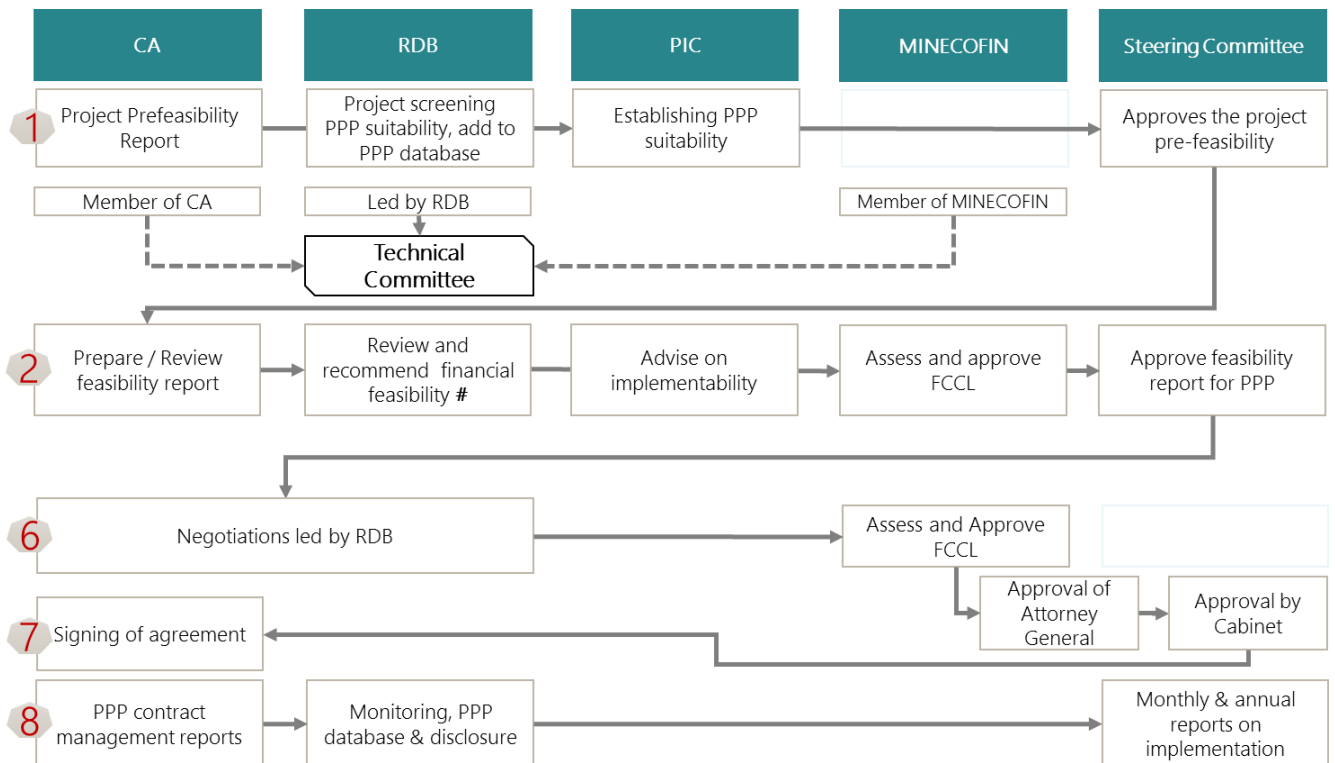
<b>Task</b>	<b>Timeframe</b>
Review and approval of bid documents by the Technical Committee	30 working days from the day of submission by the CA
Approval of shortlisting by the Steering Committee	Once in each quarter of the year
Review of bid evaluation report for recommendation of preferred bidder by TC	14 working days from the day of submission by the CA
Approval of preferred bidder by SC	Once in each quarter of the year
Assessment and approval of User Charges in negotiated PPP Agreement	20 working days from the day of submission by the CA

#### 4. PPP Project Appraisal Process for Unsolicited Project Proposals

Unsolicited Proposals (USP) are an alternative to the public planning and competitive procurement process. In the case of a USP, a Private Entity reaches out to a Public Agency with a proposal for an infrastructure project, without having received an explicit request or invitation from the government to do so.

When a Private Entity submits a USP, the government’s role is therefore to ensure that the project is structured to meet economic and societal needs and bided to ensure fair terms, conditions, and pricing. To ensure that a PPP Agreement resulting from a USP is satisfactory to the government, the Public Agency must apply additional checks and balances to strengthen its oversight role. The purpose of this section in the Guidelines is to provide guidance on ensuring that a PPP Agreement resulting from a USP is fair and affordable. This sub-section provides detailed Guidelines to appraise unsolicited project proposals and defines the roles and responsibility of the agencies involved.

**Figure 3 PPP Project appraisal process for unsolicited project proposals**



##### 4.1 Consideration for accepting unsolicited proposals under Chapter 5 of PPP law

Article 25 of the PPP law provides the circumstances under which the CA may engage with a private partner through an unsolicited procedure for procurement. The circumstances are -

- There is an urgent need to ensure continuity in the provision of an infrastructure facility or service and it is clear that engaging in a competitive procurement procedure may cause delay or it is not in the nation’s best interest;

- The implementation of a PPP Project involves matters pertaining to national security;
- The required service is a monopoly; and
- It is clear the private sector has minimal interest to invest in the infrastructure sector or in services the Government considers to be of national interest.

#### **4.2 Initial processing of proposal by the CA**

Article 26 of the PPP law provides that on its initiative or upon a proposal by the CA, the private partner prepares the PPP Project proposal and submits it to the CA for consideration and evaluation. After initial processing of the PPP Project proposal, the private partner or the CA will prepare a project pre-feasibility report. The aim of this pre-feasibility report will be to outline the CA's needs and provide a preliminary description of the envisaged project process. The template for the pre-feasibility report is provided in Annexure 1.

- A concise description of the service needs and project objectives;
- A detailed description and scoping of the various components of the project;
- Technical viability, including key technologies and their viability, and key challenges to be overcome;
- Initial environmental and social assessment;
- Investment requirements, including preliminary cost plan;
- Revenue forecast, including sources and major sensitivities;
- Land requirements, status, timing, cost (and whether budget has been allocated) and action plan;
- Key risks, mitigation and management in a risk allocation matrix;
- A preliminary estimate of funding available both for the project and the procurement process;
- An outline of the key benefits of the project and the primary beneficiaries;
- An economic cost benefit assessment;
- Financial viability, including sensitivities and a basic financial model;
- A preliminary value for money (VFM) analysis;
- Action plan to bring the project to market, including costs and key government responsibilities such as land acquisition, and
- A list of stakeholders that have to be consulted both within the CA and from other government departments.

The CA will submit the pre-feasibility study to Technical Committee for preliminary screening of the project. The RDB shall deploy the PPP screening tool to assess the project on various

parameters and ascertain the suitability of the project for PPPs. The template of the PPP screening tool is provided in Annex 2 of these Guidelines.

#### **4.3 Formation of TC**

RDB shall form a Technical Committee (TC) for review of the project submitted by the CA. The Technical Committee shall be made up of representatives from relevant stakeholders in the PPP project that have been nominated by the Heads of those institutions.

#### **4.4 Review and recommendations by the Technical Committee**

The Technical Committee shall evaluate the pre-feasibility report and run the proposed project through its PPP screening tool. This is to determine the suitability of the project to be undertaken through the PPP route.

The PPP screening tool evaluates a project on six parameters viz. Strategic suitability, Preliminary feasibility, Risk assessment, PPP suitability, Fiscal affordability and Institutional capacity. The tool comprises questions detailing the parameters and the user needs to record responses to the questions based on the pre-feasibility study.

The questions include – project scoping based on identified needs; technical, environmental, social, economic, financial and legal prefeasibility; risk assessment on major project risks; value for money and market appetite; government fiscal support and its justification; institutional capacity and preparedness of the CA.

The tool also assesses the project on some parameters by combining qualitative and quantitative outcomes of the pre-feasibility study. These include – economic pre-feasibility, financial pre-feasibility, fiscal affordability, land acquisition and foreign exchange risks. The responses to the questions in the screening tool deliver results in the form of scores for each parameter, identify deficiencies, suggest areas of improvement in the next stage of development and conclude on the suitability of the project for PPP.

The Technical Committee will evaluate the project through the PPP screening tool and comment on the suitability of the project for PPP. Projects that score ‘Moderately Adequate’ and above will be recommended for procurement through the PPP route. Projects with scores lesser than ‘Moderately Adequate’ will be sent back to the CA for reworking the project and addressing areas of deficiency indicated by the PPP Screening tool. The CA may rework the project, strengthen the areas of deficiency and resubmit the project to Technical Committee for its consideration.

The PPP screening tool score below ‘Moderately Adequate’ represents that the project is either not well prepared and requires strengthening or is not suitable for being taken up through PPP and the CA may follow conventional procurement processes for the project.

The Project Screening Tool is provided at Annexure 2.

#### **4.5 Approval of project for PPP by PIC**

The CA will submit the PPP project to the PIC for its recommendations after the project has passed the screening stage. The CA will submit a Project Profile Document (PPD) as per general planning and budgeting procedures and article 4.4.1 of the National Investment Policy, April 2017. The PPD will be complemented by the prefeasibility study and the recommendations of the Technical Committee regarding the suitability of the project for PPP. The PIC will evaluate the project as per the guiding principles of National Investment Policy and recommend the suitability of the project for implementation.

#### **4.6 Submission of pre-feasibility study by CA to the Steering Committee for approval**

The CA will submit the pre-feasibility study along with the PIC's recommendation on project suitability to the Steering Committee. The SC will evaluate the pre-feasibility study and inform the CA regarding approving or rejecting the project. If, approved the CA will take up next step of detailed feasibility study preparation.

#### **4.7 Preparation of detailed feasibility study**

On the Steering Committee approving the project, the CA or the private partner will prepare the feasibility study as per the Article 27 of the PPP Law. The feasibility report shall be prepared as per sections 3.2.2 of the Guidelines and Annexure 3. The completed feasibility study shall be submitted to the Technical Committee for its review and recommendations. If the report is prepared by the Private Partner, then the CA shall assess the feasibility report for its completeness before submitting it to RDB.

#### **4.8 Review and recommendation on feasibility report by the Technical Committee**

Upon receiving the feasibility report from the CA, the TC shall review and provide its recommendations to the SC with respect to the feasibility study of the project. The areas of review by the TC shall include:

- Scoping of the project;
- Selection of the project structure;
- Obligation of the parties;
- Risk identification and its mitigation measures;
- Financial feasibility and project return estimates;
- VFM analysis;
- Project term sheet/ proposed contractual arrangements; and
- Bidding strategy and eligibility criteria

The representative of MINECOFIN in the TC shall provide comments and recommendations in the detailed feasibility study with respect to the FCCLs in the project.

In parallel, the Technical Committee will also call for comments from the Regulatory Authority (RA) if the project involves levy of user charges or tariffs on citizens in accordance with licensing and regulatory requirements for the sector.

The checklist for review of the feasibility report is provided at Annexure 4.

The recommendation of Technical Committee on the feasibility study report will be then be submitted to PIC by the CA.

#### **4.8.1 Review and advice on fiscal commitments by MINECOFIN**

The member of TC from MINECOFIN will comment on the FCCL arising from the project, comment on the fiscal affordability and recommend the fiscal envelope for the project. He will independently assess the project, approve or reject the project considering government's affordability due to the FCCLs in the project. MINECOFIN shall submit its assessment report to the Technical Committee for compiling recommendations to support the SC in its decision making.

For review of FCCLs in a project by MINECOFIN, the following information shall be submitted by the CA. The information should be provided in electronic copies of excel spreadsheets:

- Economic evaluation: A cash flow model that includes the following elements and allows the calculation of the IRR:
  - Project costs (investment, operation and maintenance),
  - Revenue from users and government payments
  - Depreciation
  - Results before and after taxes.
- Financed project evaluation: A cash flow model using the same data as the pure project evaluation, but including:
  - Financial costs
  - Debt payments

The model building for above involves parameters that must be taken from the financial markets such as: the cost of equity, debt and other instruments, terms and conditions affecting rate resets, and some others relating to decisions of the government such as: requirement of minimum equity, timing of equity, provision of support and guarantees such as minimum revenue guarantee (MRG)s, demand guarantees, credit guarantees, availability based payments, and others that might have an effect on costs.

The fiscal risk assessment by MINECOFIN shall include the following:



- Review of the expert-assessed Project Risk Matrix (PRM) paying attention to the probability, timing and impact of project events associated with each of the key identified risks. Project risk matrix (PRM): For each project, a PRM shall be submitted by the CA that contains information on:
  - Risk and its description
  - Expert's estimate of the probability that the risk will be realized
  - Expert's estimate of the impact of the risk as a percentage of the base.
  - The base or amount
  - Most likely timing of the risk event
  - Cost of the risk in NPV terms
  - Risk distribution between public and private parties in terms of percentage of costs borne
  - Distribution of cost of the risk between parties in terms of NPV amount
  - Mitigation of risk
- MINECOFIN-Debt Unit shall also review the valuation of guarantees and calculation of estimated payments as per Annexure 5.
- Assess the government's fiscal capacity to make the estimated payments; MINECOFIN – Debt unit shall, from a budget priorities/ constraints point of view, check the availability of appropriate liquidity provisions against the potential funding or government support requirements.
- In ensuring the general sustainability of the fiscal support, MINECOFIN shall further assess if the project is within any caps or limits that may have been prescribed by government for FCCL arising from PPP projects.
- If the MINECOFIN finds the fiscal risks of the project to be in order, it will, provide its recommendation, with clear and detailed reasons with respect to all the parameters discussed above, and return it to the RDB for further processing and submission to the SC for approval. The RDB while submitting its recommendations shall specifically ensure that the MINECOFIN's report is also included in its submissions.
- The MINECOFIN shall return the proposal to the RDB and CA where:
  - It requires more information;
  - Is of the view that the project, as structured, may result in fiscal impacts that are not affordable to the government;
  - Is of the view that identified fiscal impacts can be reduced by better structuring of risk;  
or
  - Perceives the proposal to be deficient in any other way

- In returning the proposal to the RDB/CA, the MINECOFIN shall give clear comments on the deficiencies it has noted in the project and include recommendations for improvement.

#### **4.9 Review of detailed feasibility study and recommendations on implementation by PIC**

As per the National Investment Policy, April 2017, approval of PIC is necessary on the detailed feasibility study based on economic and strategic public investment considerations. The CA shall submit the PPD comprising the detailed feasibility study, recommendations from RDB, MINECOFIN and RA (if required) for the consideration of PIC. The PIC shall evaluate the project and recommend the project for implementation based on national investment priorities.

#### **4.10 Approval of detailed feasibility study by the Steering Committee**

After PICs approval, the CA shall submit the feasibility report to the SC along with recommendations by PIC, MINECOFIN, RDB and RA for approval of the project by SC. The SC shall approve or reject the feasibility study report considering the recommendations and submissions by CA. It may ask for additional information and advise the CA on the project.

As per Article 27 of the PPP law, where the Steering Committee does not approve the feasibility study, it provides guidance on what should be done.

#### **4.11 Negotiations for unsolicited proposal**

After receiving the approval of the SC, the RDB, shall enter into negotiations with the private partner. The RDB shall lead the negotiations of the PPP agreement, with the support of the TC. Preparation for the initial negotiation meeting will include:

- Outlining the objectives of the negotiations, clarifying any gaps, misunderstandings, terms and conditions;
- Devising a strategy, anticipating the private party's position, and predefining responses; and
- Sending an invitation to the preferred bidder for a negotiation meeting. Information on the names and positions of the bidder negotiation team should be requested ahead of time.

### **Managing negotiation meetings**

At the initial negotiation meeting, time should be spent on introductions, opening statements, and on creating a climate of trust and cooperation. This will be an important investment in fostering a good working arrangement.

In ensuing meetings, the negotiation team should define outstanding issues, identify shared and conflicting interests, and jointly refine the agenda to include action items. The TC shall keep track of the evolving contract documentation.

During the negotiation process, the TC should concentrate first on common and easily resolvable issues to establish a collaborative process. Options placed on the agenda should be selected by using mutually agreed upon, objective criteria, based on valid concepts, standards, and principles.

Final negotiations might require compromises so that both parties see the settlement as the best possible option under the circumstances. As commercial details become clearer, the contract management team must be prepared to bridge affordability gaps as well reduce output specifications to keep the project affordable, provided that quality and VFM are maintained.

Once terms have been agreed upon, details of the negotiated points and resolutions must be recorded, and an agreement made to follow up on outstanding issues in the contract management plan so that the negotiated terms and time frame are not impacted.

The RDB shall produce recommendations of the meetings, and shall also obtain the written confirmation from the private partner, that the same are a true and accurate record of the negotiations held. Thereafter the recommendations shall be submitted to the CA.

The RDB's recommendations may be one of the following:

- Proceed with contract award to the private partner, incorporating the agreements reached during negotiations;
- Revise the negotiation objectives and hold further negotiations, or
- Terminate the negotiation and reject the selected partner.

Where the RDB recommends rejection of the private partner it will record the reasons for termination of negotiations with the Private Partner.

The results of any approved negotiations shall be specified in a letter of acceptance and incorporated in the draft PPP Agreement. Where negotiations are opened with the next ranked Bidder, the procuring entity shall not reopen earlier negotiations, and the original Bidder shall be informed in writing, the reasons for termination of the negotiations.

A preliminary schedule for signing the PPP Agreement shall then be established. Once the negotiation is completed by RDB the RDB shall prepare the final PPP Agreement. The MINECOFIN representative to TC shall re-confirm on the FCCLs

#### **4.11.1 Post-negotiation checks of user charges by RA**

The RDB shall submit the negotiated PPP Agreement to the Regulatory Authority in cases where project agreements require levy of user charges or tariff charged to consumers. These agreements will need to be reviewed and approved by RA as per licensing regulations for that sector.

#### **4.11.2 Post-negotiation conformation of fiscal commitment by MINECOFIN**

The member of TC from MINECOFIN shall assess the PPP agreement and the final FCCLs arising out of the agreement, and provide its recommendations to the RDB. MINECOFIN will provide a budget for managing the fiscal commitments for the project.

- Based on the final project structure and the preferred bidder submission, MINECOFIN representative to TC shall check for any changes in the project variables during the process of procurement or negotiation, and their effect on the fiscal impact of the project, as well as for any change in macroeconomic or other variables affecting the fiscal capacity of the government.
- On recommendation of MINECOFIN representative to TC, RDB shall return the project report to the CA if it finds that:
  - There has been a substantial change (either introduced by bidders' proposals or the CA) in the FCCL, making the project unaffordable;
  - The fiscal situation of the government has changed;
  - It requires more information;
  - The fiscal impact can be reduced by better structuring of risk; or
  - If the project structure is deficient in any other way
- In returning the report to the CA, the RDB shall give clear comments on the deficiencies it has noted and include recommendations for improvement.
- If the MINECOFIN representative to TC finds the fiscal risks of the project to be in order, it will provide its approval giving clear and detailed reasons for its decision and return it to the CA for further processing.

On approval of MINECOFIN, the PPP Agreement shall be submitted to Attorney General by the RDB.

#### **4.11.3 Obtaining a legal opinion**

Before the contract is sent to Cabinet for approval, the GoR should have a legal opinion provided by the Attorney General.

#### 4.11.4 Approval of cabinet

Based on the recommendations of the RDB, MINECOFIN and the Attorney General's legal opinion, the PPP Agreement will be submitted to the Cabinet for approval before it can be signed.

#### 4.12 Signing of the PPP Agreement

After receiving the cabinet's approval, the CA shall sign the PPP Agreement with the private party.

#### 4.13 Timelines for PPP procurement

The institutions may follow the following timeframe for achieving efficiency in PPP Project procurement.

**Table 5 Timelines for PPP procurement**

<b>Task</b>	<b>Timeframe</b>
Initial processing of proposal by CA	30 days from the date of submission by private partner
Review and recommendation by TC	30 working days from the day of submission by the CA
Review of project by PIC	Once in each quarter of the year
Approval of project by Steering Committee	On convening of the Steering Committee
Review of feasibility report by TC	30 working days from the day of submission by the CA
Recommendation by PIC	Once in each quarter of the year
Approval of the Steering Committee	Once in each quarter of the year, or when called by RDB
Review of User Charge by the RA	30 working days from the day of submission by the RDB

## **5. Transaction Advisors**

The PPP project development process may require the inputs of a transaction advisor if the CA feels the capacity within the organization is not adequate to manage the project development process, especially if the project is complex. Even if the capacity within the organization is adequate, a professional firm associated as the technical advisor is considered to add value to the process by:

- Bringing in experience in similar transactions and protecting against costly, avoidable mistakes;
- Providing technical strength to the CA's team;
- Bringing legitimacy to the PPP process and placing an external stamp of endorsement on the Government's proposals, increasing investor and public confidence;
- Providing an opportunity for knowledge and skills transfer;
- Developing strategies for government consideration;
- Helping to develop public messages and information;
- Analyzing PPP options; and
- Supporting the bidding and negotiation processes.

Accordingly, the CA may hire the services of the transaction advisors and/or specialist advisors such as lawyers, financial analysts, financiers, economists, sociologists, and sector specialists to support the CA for successful PPP project implementation. These advisors can be procured as a team or recruited individually, in which case coordination among the team members should be ensured.

### **5.1 Roles and responsibilities of transaction advisor**

The transaction advisor shall develop all the detailed financial, technical, economic, environmental, social and legal work required to prepare the institution for a PPP Agreement. The transaction advisor will complete a feasibility study to a standard that will enable the institution to obtain approval from the Steering Committee. In the PPP procurement phase, the transaction advisor will prepare and implement the PPP procurement process, including preparing all necessary documentation to enable the institution to obtain transaction approvals and complete a close-out report and case study. The TA shall support CA in review process of feasibility report, bidding documents by the TC.

The transaction advisor may also be required to provide PPP Agreement management support to the institution after the agreement is signed, particularly in the development phase and the early years of the delivery phase.

## **5.2 Scope of work for transaction advisor**

The terms of reference for the Transaction Advisor (TA) should clearly articulate the requirements and expectations of the institution. This document, along with the proposal submitted by the TA, will form the deliverables schedule of the TA's contract. Hence, the clearer and precise the terms of reference, the higher the quality of bids received. While the structure of the terms of reference should be the same across institutions, the content will vary significantly across projects and sectors. The terms of reference for the TA should consist of the following sections:

### **Introduction**

Briefly describe the project and its objectives, and how these align with the institution's strategic vision.

- Introduce the terms of the reference

### **Scope of work**

Outline the scope of the parts of the work of the TA:

- Prefeasibility study for the project
- Feasibility study for the project
- Procurement of the PPP (if applicable).

### **Background**

Introduce the project as comprehensively as possible:

- The institutional mandate to proceed with the project
- The institutional needs that led to the project
- The objectives of the project
- Background documentation and preparatory work: Background and supporting documentation to the terms of reference and all non-confidential preliminary work which the institution has already done. Describe the challenges which the institution faces in pursuing the project, and the legal and policy framework for the project.
- The budget for the project.

### **PPP prefeasibility study deliverables**

- Components of the prefeasibility study
- Presentation of the prefeasibility study
- Submission requirements for the prefeasibility study in line with PPP screening tool requirements

### **PPP feasibility study deliverables**

- Components of the feasibility study

- Presentation of the feasibility study
- Submission requirements for the feasibility study and request for the Steering Committee

### **PPP procurement deliverables**

- Administration of the bidding process
  - RFQ
  - Payment mechanism
  - Bid evaluation criteria and bid process design
  - Request for proposals (RFP)
  - A draft PPP agreement
  - Approval from the TC
  - Administration of the bidding process
- Evaluation of bids and demonstrating value for money
  - Evaluation of bids
  - Approval from the Steering Committee
- PPP agreement negotiations, PPP agreement management plans
- PPP Agreement signature, close-out report and case study, and financial closure

### **5.3 Process for appointing the transaction advisor**

A CA is responsible for procuring the services of a TA.

- The TA can be appointed through a competitive procedure.
- For procuring the services of a TA, the CA shall prepare a term of reference in relation to the project. The CA may invite an expression of interest by publishing a general advertisement in at least two national newspapers, website of CA and any other medium identified by CA as appropriate, inviting any person or firm responding to the advertisement. The advertisement for expression of interest shall provide
  - The deadline for the submission of expression of interest
  - Place where the submission has to be made
  - The format according to which the expression of interest is to be submitted
  - The criteria for evaluating the expression of interest
- The CA shall evaluate the expressions of interest and prepare a short list of at least three candidates but not more than seven candidates that meet the CA's requirements.



- The CA shall prepare a request for proposal document covering terms of reference, instructions for preparation of proposal, criteria for evaluation of proposal, draft contract agreement, and standardized forms for the submission of technical and financial proposals.
- The CA shall invite shortlisted candidates to submit the request for proposal.
- The CA shall evaluate the proposals submitted by opening the technical proposals first.
- The CA shall open and evaluate the financial proposal for the proposals qualified for technical evaluation; the financial proposals of the proposals that have not qualified for technical evaluation shall be returned unopened.
- The CA shall invite in writing the candidate who was successful to sign the contract with the CA for providing the Transaction Advisory services.

#### **5.4 Payments to transaction advisors**

The CA is responsible for appointing the TA and payment of fees for providing the services. The remuneration system should be based on a fixed payment for identified deliverables in each stage of the PPP life cycle that the TA is involved in and the RFP should be structured to reflect this.

The professional fees payable to the TA should consist of:

- **Retainer fee** which would be linked to specific deliverables and corresponding milestones of the PPP Project life cycle. The retainer fee payable at each milestone should be linked to the relevant decision to be taken at that stage rather than the approvals. This is because the institution may decide, based on the feasibility study, not to proceed with a PPP, or the Steering Committee may have reason to grant the approval of the feasibility study – such decisions may not reflect on the quality of the TA’s work, but on unsuitable conditions which the study exposes.
- **Success fee** which would be payable on financial closure of the project. The fee should be a predefined per cent of the cost of procurement phase fees, depending on the size of the transaction. The terms of the success fee should be specified to enable the institution to deduct from the success fee if significant delays can be directly linked to the TA’s work.

## 6. Project Implementation and Agreement Management

### 6.1 Objective of PPP Agreement management

While specific provisions of PPP agreements may vary across sectors, the essential principles to manage such projects are similar and would apply to all PPP Projects. The PPP agreement management plan developed at the end of the PPP procurement phase is put into action during the subsequent phases of project development, delivery and exit.

The PPP Agreement should include provisions for the PPP agreement management approach required by the CA. In practice, many aspects of the approach will depend upon the skill, judgment and creativity of the project officer and the PPP agreement management team after the agreement has been signed.

### 6.2 Management of PPP Agreement

The PPP Agreement management should focus on the service delivery requirements to be achieved by the private party through the use of effective mechanisms for quality assurance, spot checking, performance monitoring, and corrective action.

In managing the PPP agreement, the CA needs to maintain a balance between excessive or too little control and regulation during the term of the project agreement. The success of the project would depend on the strategy adopted by the CA. Excessive control and regulation of the private party could interfere with the process of innovative service delivery from the private party and limited control could lead to an increase in risk to the CA of divergence of service delivery from project objectives.

The PPP agreement management framework includes the following:

- **PPP service management:** This relates to managing the PPP from the perspective of risk and performance. The range of risks associated with the PPP Agreement is larger than the risks identified at the procurement phase. An effective PPP Agreement management plan should identify, monitor and manage such risks and ensure performance meets standards specified in the agreement.
- **PPP relationship management:** This relates to managing the structure of authority and accountability within the PPP service delivery framework as specified in the PPP agreement to ensure efficient service delivery.
- **PPP Agreement administration management:** This involves outlining administrative processes required to manage all procedural and documentation issues specified in the PPP agreement.

The PPP Agreement Management Framework impacts each phase in the PPP Project lifecycle.

### **6.3 Appointment of a Contract Management team by the CA**

The establishment of a Contract Management team within the CA is the first step in the Contract Management process. The strength of the Contract Management function is derived from the skills, experience and knowledge of such a team. A clear definition of roles and responsibilities of key individuals on this team is crucial to the effective management of the PPP Agreement.

The overall size and complexity of the project would determine the size and skill sets required by the PPP agreement management team. In some cases, it may be possible for the PPP agreement management function to be carried out by a single individual. The team size and composition will evolve through the PPP Project life cycle as varied technical skills and experience would be required at each phase. While at the inception, feasibility and procurement phases it would be the Project Team, in the PPP development, delivery and exit phases, it would be the PPP agreement management team.

#### **Typical expertise**

The Head of the CA is responsible for deciding the composition of the PPP agreement management team, how it should be deployed, and whether and when to call on additional expertise (within the scope of the budget). The range of expertise and skills required will vary over the life of the PPP agreement. The team composition will reflect the skill sets required to effectively fulfil the PPP agreement management responsibilities during each stage. Typical expertise that needs to be represented or made available includes:

- Knowledge of the subject matter;
- Design and construction;
- Business and product assurance;
- Facilities and services management;
- IT (especially, but not only for IT projects);
- Statutory safety and regulatory responsibilities;
- Legal and regulatory;
- Finance;

#### **Structure**

It will be the responsibility of the project officer to co-ordinate inputs from the various PPP agreement management team members to ensure effective and consistent PPP agreement management. The Head of the CA should establish a suitable structure for the PPP agreement management team well before the agreement comes into force. The private party should be made fully aware of the PPP agreement management structures established within the

institution. Usually, the private party will appoint its own PPP agreement management team to act as its interface with the institution.

### **Outside expertise**

Where PPP Agreement management expertise is brought in from outside the institution, either on an ad hoc basis or under a long-term arrangement, it will be important to ensure that commercially confidential information held by the institution is protected. The terms of reference, timeframes and the basis of fees for such advisors must be clearly defined to ensure that management of the PPP agreement rests with the institution. Any contract with independent professional advisors providing contract management services must contain clear arrangements for reporting the results of performance monitoring to the institution and the private party.

### **Succession planning**

The personnel involved in the management of a long-term PPP agreement are likely to change several times over the project lifecycle. New and uninitiated personnel will require considerable time to become sufficiently familiar with the project details for efficient management.

The CA should establish a succession plan for the key personnel to manage personnel changes effectively. The plan should be sufficiently flexible to provide quality on-going management along with accommodating change. The aim should be to limit concurrent departures and to ensure that the retained team has a sufficient mix of old and new personnel.

### **Exit strategy**

The project officer should prepare an exit strategy as part of the process of developing the agreement management plan. This strategy should be based on the provisions contained in the PPP Agreement in relation to termination and expiry, and should demonstrate the CA's capacity to bring the project to an end efficiently and ensure on-going service delivery. This may be achieved either by continuing the functions in-house or by setting up the inception phase of a new PPP Project.

The exit strategy should include:

- An analysis of options, within the parameters of the PPP Agreement, for continuing the service after termination or expiry, and an initial recommendation on the preferred option;
- Plans for organizing a post-implementation review of the project, which should:
  - Assess key deliverables, value for money, quality and project innovation; and
  - Be carried out within six months of the expiry or termination date
- The steps that will be taken to integrate the lessons of the project into the day-to-day work of the CA;

- An implementation plan based on the hand-back procedures set out in the PPP Agreement;
- Plans to deal with the implications of any employee transfers from the private party to either the institution or a successor body;
- An estimate of the resources and personnel that the institution will allocate to managing the exit strategy; and
- Plans for a closure event to celebrate the achievements of the project and prepare PPP Agreement management staff and end users for their new role.

The exit strategy should be reviewed at appropriate points during the delivery phase, and revised as necessary to ensure that robust plans are in place three years in advance of expiry of the project term.

#### **6.4 Reporting requirement to the Steering Committee and MINECOFIN**

During the implementation of PPP agreement, the CA shall send monthly and annual progress reports to the Steering Committee with respect to the PPP project implementation.

The key parameters for reporting requirements are.

- **Performance management reporting** is concerned with ensuring that the PPP Project remains affordable for the institution and manages service delivery, value for money, quality and performance improvement.
- **Risk management reporting** involves keeping the exposure of the project to any potential threats at an acceptable level by taking appropriate action.

##### **6.4.1 Reports to the Steering Committee**

The project officer will provide to the Steering Committee monthly and annual progress reports on the implementation of PPP agreement. The PPP contract management team will conduct the necessary test and checks for preparing these reports.

**Table 6 Performance requirements, criteria and monitoring requirements**

<b>Performance requirements</b>	<b>Performance criteria</b>	<b>Monitoring arrangements</b>
Quality of services	Specifications and standards based on output specifications in the Concession Agreement	Tests, inspections, user complaints procedure
Maintenance	Schedules, including dates; specifications and standards	Tests, inspections, reporting

Financial reporting	Schedules, including dates; accounting standards	Reporting, audits
Asset quality at handover	Specifications and standards	Tests, inspections

A risk management plan is an essential element of PPP agreement management. During the procurement phase, the institution would identify the risks associated with the project which would be put into a template in the form of the risk matrix. The matrix would detail the identified risk, mitigation mechanisms, the allocation of such risks, and probabilities associated with each, and costing of the same should be undertaken. While the risk management plan will explain the mechanisms and procedures that the CA will use to manage, monitor, and mitigate risks, the Head of the CA should ensure that these mechanisms are put in place after the signing of the PPP agreement.

- **Risk register:** The risk register is a log of all risk and all relevant information related to each identified risk. This document presents a consolidated picture of the project's risk exposure. A format for risk register is provided in Annexure 8.

The project officer should update the risk register regularly and then generate the summary risk profile which shows the risk in terms of probability and impact, with the effects of mitigating action taken into account. The risk tolerance line in the summary risk profile graph reflects the risk tolerance of the institution to general and project-specific risks. This risk tolerance line is set by experienced risk managers in conjunction with the project officer and CA and should be regularly reviewed. If at any point in time, the overall risk exposure is above and to the right of the risk tolerance line, the project officer and the PPP agreement management team will need to take prompt action with respect to relevant risks. Such deviation should be reported to Steering Committee with a mitigating action plan.

The risk register for the risks involved in the PPP agreement implementation stage has to be evaluated annually and the updated status shall be submitted to the Steering Committee on a yearly basis.

#### 6.4.2 Reports to the MINECOFIN

The MINECOFIN shall be kept informed for the FCCL arising out of implementation of the PPP agreement. The risk register and the risk summary report shall be submitted to the MINECOFIN annually.

#### 6.5 Post Agreement Negotiations

During the course of implementing projects there may be events occurring that are provided for in the PPP Agreement (which often happens due to the lengthy duration of PPP projects) that the contract management team needs to address these issues and strike a satisfactory balance between:

- Encouraging the private partner to manage its risks; and
- Preventing poor performance by the private partner from endangering the viability of the PPP project.

If the renegotiations are triggered by changes that are not permitted and/or provided for in the PPP Agreement, the associated risks should be acknowledged and mitigated. The Contract Management Team and CA shall take necessary action for remedy of the event and risks arising out of it.

The CA shall inform RDB in case the renegotiation would potentially result in change in the agreed levels of FCCLs in the project. Such issues will need to be resolved through renegotiations involving RDB, the MINECOFIN and other relevant stakeholders.

In such cases, RDB shall lead the renegotiation process with the support of a Technical Committee nominated for the renegotiations purposes. RDB and TC shall evaluate amendments to the PPP Agreement for mitigating risks and to ensure that the project continues to provide:

- Value for money;
- Affordability; and
- Substantial technical, operational and financial risks transfer to the private partner.

## **6.6 Transparency and public disclosure**

The Government of Rwanda is committed to open, transparent and accountable procurement. The aim is to disclose as much as possible in the public interest without impacting the government's ability to generate value for money for taxpayers. While the goal of transparency in PPPs is important, openness must not harm the competitive process or the government's negotiating position. Transparency must also not discourage bidders.

Following table describes the recommended disclosures. Disclosure would generally be through the CA's and RDB's website.

**Table 7 Guidelines for disclosure**

<b>Milestone</b>	<b>Guidance</b>
Pre-feasibility report	Do not disclose. Disclosure would jeopardize government's position and harm the competitive process.
Detailed feasibility report	Do not disclose. Disclosure would jeopardize government's position and harm the competitive process

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Request for Qualification (RFQ) document	Disclose. Publicly available document.
Name & number of parties who respond to RFQ	Disclose number. Do not disclose names as unlikely to be meaningful.
Number of parties who respond to RFQ	Disclose.
Name and number of parties who are short-listed at the RFQ stage and receive the Request for Proposals (RFP)	Disclose.
RFP document	Disclose.
Final form of Project Agreement	Disclose.
Name and number of Proposals received	Disclose.
Name of preferred bidder	Disclose.
Value for Money Assessment and Project Report	Do not disclose
Proposals received from proponents	Do not disclose. Commercially confidential information.
Executed agreement	Do not disclose commercially confidential information (see recommendation on disclosing final form of agreement).



## Annexure 1 - Template of prefeasibility study

The CA shall prepare the pre-feasibility study for the PPP Project by using the following template:

<b>Pre-feasibility report Template</b>	
<b>Contracting Authority</b>	
<b>Prepared by:</b>	
<b>Submittal date:</b>	
<ul style="list-style-type: none"> <li>• Description of the project, key parties and stakeholders,</li> <li>• Progress of the project to date, existing studies, teams created, data gathered, interest shown by private investors, land acquired, etc.</li> <li>• Investment requirements, including preliminary cost plan;</li> <li>• Revenue forecast, including sources and major sensitivities;</li> <li>• Land requirements, status, timing, cost (and whether budget has been allocated) and action plan;</li> <li>• Key risks, mitigation and management in a risk allocation matrix;</li> <li>• Technical viability, including key technologies and their viability, and key challenges to be overcome;</li> <li>• Value-for-money analysis</li> <li>• Financial viability, including sensitivities and a basic financial model;</li> <li>• Economic viability, including sensitivities and a basic assessment model;</li> <li>• Action plan to bring the project to the market, including costs and key government responsibilities such as land acquisition.</li> <li>• Regulatory assessment</li> <li>• Preliminary social and environmental assessment</li> <li>• Project preparedness in terms of capacity assessment and skill assessment of CA and its staff for project development, implementation and monitoring</li> <li>• Advise on appropriate next steps for each project, and the appropriate pace and sequencing of progress across the portfolio, marketing strategy, a list of likely</li> </ul>	

interested, strategic investors, an action plan, with next steps and sequencing to deliver the PPP program.

## Annexure 2 - PPP Project screening tool

The RDB together with the TC shall evaluate the pre-feasibility study prepared by the Contracting Authority by deploying the PPP project screening tool. The tool will assess the project on the following parameters;

- Strategic suitability
- Preliminary feasibility
- Risk assessment
- PPP ability
- Fiscal affordability
- Institutional ability

Each of the above parameters is detailed by sub-parameters and qualitative questions for evaluation. The key project templates are;

### Input: Basic Project Data Sheet

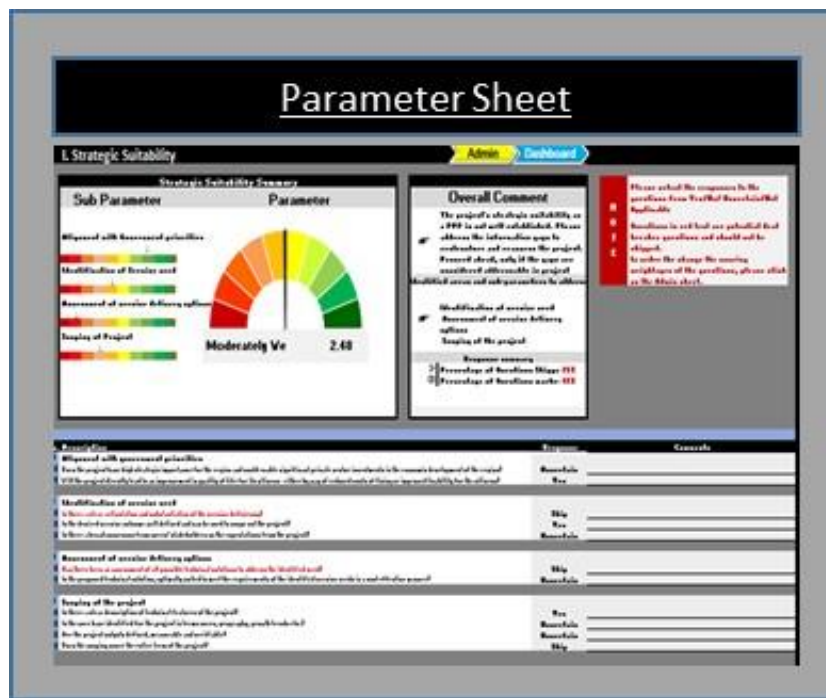
This consists of project related information pertaining to the type of project, land availability, return expectations, forex profile etc.

Basic Project Data		
Project Name/Title	XYX Expressway Project	
Submitting Ministry/Agency	Ministry of Transport	
Date of Submission		
Project Profile		
Location	Rwanda	
Sector	Transport	
Project type	Construction, Operations and Maintenance	
Currency	USD Mn	
Project size	800	USD Mn
Revenue Profile		
Main Source of Project Rev	Hybrid Payments	
Percentage share of Availability Payments in Is Government support required for the project?	95%	Percent
	No	
Land Status		
Land Unit	Hectares	
Total Land Required for the Available Land	200	Hectares
Land to be acquired	100	Hectares
Responsibility of Land Acqui	Public Sector	
Value for Money - Quantitative Assessment		
Value for Money from the P		Percent
Threshold Value for Money		Percent
Return Expectations		
Project IRR		Threshold Minimum DSCR
Project IRR (Stress Case)		Minimum DSCR
Threshold Project IRR		Minimum DSCR (Stress Case)
Economic IRR		Threshold Economic IRR

### User Response Parameter Sheet

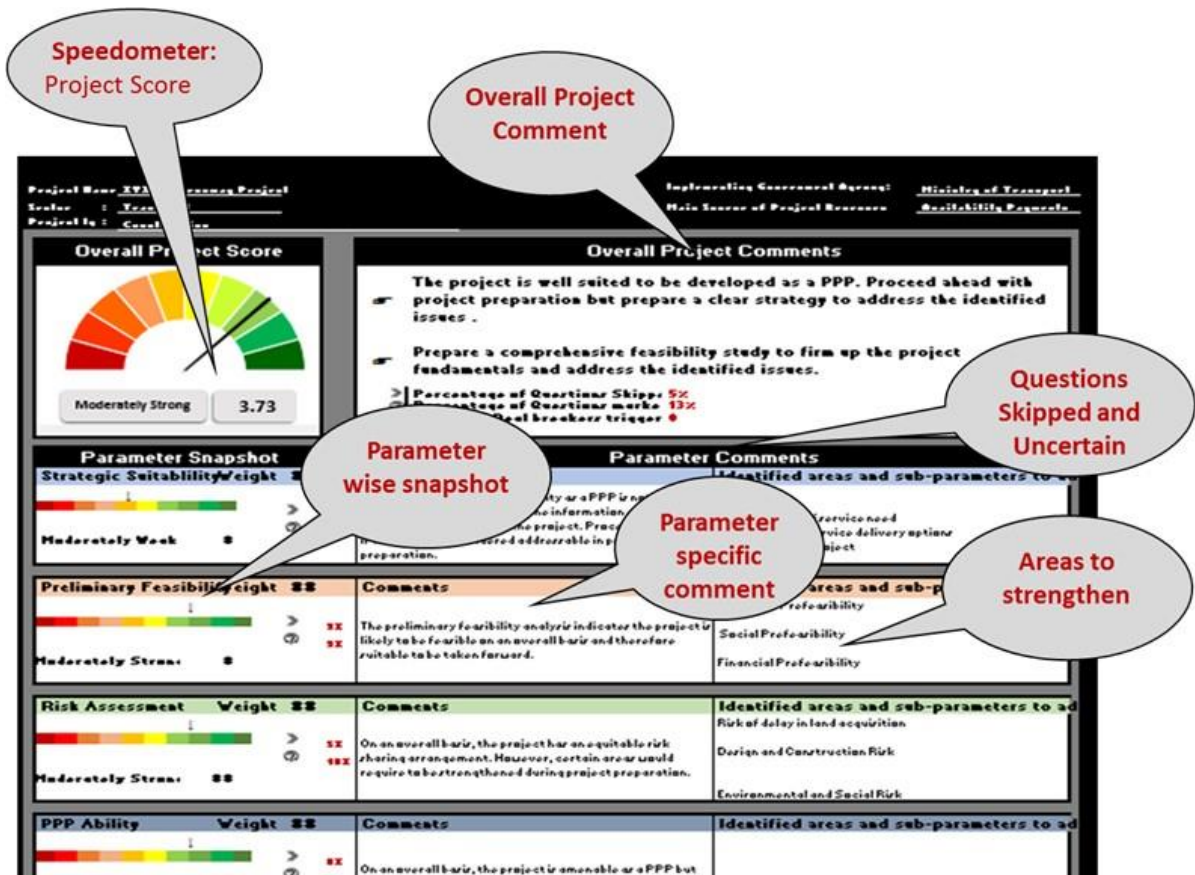
- User responses to questions are organized into six Parameters which are:
  1. Strategic Suitability,

2. Preliminary Feasibility,
  3. Risk Assessment
  4. PPP Suitability
  5. Fiscal Affordability
  6. Institutional Capacity
- The above parameters are grouped into Sub Parameters in the parameter sheets



**Output in the form of Dashboard**

- Provides summary of the overall score and parameter-wise score based on the User responses
- Highlights the problem areas that requires strengthening
- Indicates the number of questions skipped, marked uncertain and NA
- Compiles parameter and sub parameter weights and scores at one place



### Annexure 3 – Structure for PPP project feasibility study

The Contracting Authority shall use the following template to prepare the feasibility study report

<b>Feasibility study template</b>	
<b>Contracting Authority</b>	
<b>Prepared by:</b>	
<b>Submittal date:</b>	
<b>General information:</b>	
Project name and reference number	
Project description	Provide a narrative to give an overview of the project.
<b>INSERT LOCATIONAL GRAPHIC and NARRATIVE</b>	
<b>Impact and desired outcome (related to sector):</b>	
Economic	
Social	
Environmental	
<b>Justification for choice of project Among alternatives:</b>	
<p>Project is technically best option:</p> <ul style="list-style-type: none"> <li>• Here reference to the Feasibility Study, highlighting which alternative technical solutions have been considered and the respective evaluation (this should include reference and highlight of an economic cost-benefit assessment)</li> </ul> <p>Project represents best option for procurement and structure:</p> <ul style="list-style-type: none"> <li>• Here references the analysis of value for money from the Feasibility Study, highlighting headline comparison of alternatives. This shall include reference to affordability calculations, public sector comparator, etc.</li> <li>• Reference to market sounding efforts and demonstration of likelihood of market demand</li> </ul>	
Project due diligence:	

<p>It is required that the Contracting Authority or expert reference the Feasibility Study and present a narrative summary of the due diligence findings with particular attention to major discussion points.</p>
<p><b>Design summary (Project mechanics):</b></p>
<p>It is required that the CA or expert give an overview of how the project is structured, functions, and operates:</p> <ul style="list-style-type: none"><li>• Outline payment mechanism</li><li>• Indicative financing structure</li></ul>
<p><b>Headline financial evaluation:</b></p>
<p>INSERT Headline project financials from the financial model with any key notes</p>
<p><b>Government exposure and/or support required:</b></p>
<p>A presentation of the project’s impact on government programs, focus, and resources. This can include, but not limited to:</p> <ul style="list-style-type: none"><li>• Tariff subsidy</li><li>• National taxes, duties and charges</li><li>• Local taxes, fees and charges</li><li>• Government Supported Enhancements</li><li>• Contingent Liability</li></ul>
<p><b>Implementation considerations</b></p>
<p>The Contracting Authority or expert shall give a concise overview of factors related to implementation that are notable. This shall be oriented toward helping inform the reviewers understanding of necessary requirements to establish the project. The Contracting Authority may include the following (example):</p> <ul style="list-style-type: none"><li>• Resource constraints</li><li>• Institutional capability</li></ul>
<p><b>Implementation schedule / Project milestone dates:</b></p>
<p>INSERT Excel/ Gantt of primary project phases, key tasks, responsibilities, and accompanying milestones. Provision of time and date estimates is required.</p>
<p><b>Project risk matrix:</b></p>

The Risk Management Unit will require an analysis of risk to conduct its assessment and determination if the project poses any fiscal commitment or contingent liabilities. This will consist of an expert’s assessment of the probability, timing and impact of the events associated with each of the key identified risks. The Contracting Authority shall populate a risk matrix as indicated below

<b>Identification of risk/ risk type, description</b>				<b>Allocation strategy</b>			
Example: Demand and revenue risk				Allocation of public vs private party			
Risk and its description	Probability of risk event/ rationale and assumptions	Estimate of impact (on project value)	Most probable stage or timing	Cost of risk (in terms of NPV)	Risk distribution: Public vs private (in terms of % of)	Distribution of costs between parties (in terms of NPV)	Mitigation plan for risk event
Risk 1							
Risk 2							

**Detailed financial model:**

The Feasibility Study Report shall include an MS Excel copy of the financial model, with traceable formula format, which clearly sets out all assumptions made, sensitivity analyses carried out, key outputs in support of the various analyses and conclusions. The financial model shall be sufficiently robust/ adaptable for use by others at later stages of the PPP life cycle.



## Annexure 4 – Checklist for feasibility study

This section provides an indicative checklist for the Feasibility Study. The objective of this check list is to ensure that the information as required to be included in the Feasibility Study by the parties to the project have been included or not. This provides a quick check of the key data pending to be availed and included in the Feasibility Study.

### Checklist for Feasibility Study

SN	Particulars (Tick “✓” the applicable box)	Provided	Not provided	Not applicable
<b>1</b>	<b>General</b>			
1.1	Name of the project			
1.2	Type of PPP (BOT, BOOT etc.)			
1.3	Location (Province/District/Town)			
1.4	Responsible ministry/department			
<b>2</b>	<b>Project description</b>			
2.1	Brief description of the project			
2.2	Justification for the project			
2.3	Possible alternatives, if any			
2.4	Estimated capital costs with break-up under major heads of expenditure also indicate the basis of cost estimated			
2.5	Phasing of investment (if required)			
<b>3</b>	<b>Financing arrangements</b>			
<b>3.1</b>	Sources of financing (equity, debt, mezzanine capital etc.)			
<b>3.2</b>	Indicate the revenue streams of the project (annual flows over project life). Also indicate the underlying assumptions			
<b>3.3</b>	Indicate the Net Present Value (NPV) of revenue streams with appropriate discounting			
<b>3.4</b>	Who will fix the tariff/user charges? Please specify in detail			

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<b>SN</b>	<b>Particulars (Tick “✓” the applicable box)</b>	<b>Provided</b>	<b>Not provided</b>	<b>Not applicable</b>
<b>3.5</b>	Have any financial institution been approached? If yes, their response may be indicated			
<b>4</b>	<b>IRR</b>			
<b>4.1</b>	Economic IRR (if computed)			
<b>4.2</b>	Financial IRR (project and equity), indicating various assumptions			
<b>5</b>	<b>Clearances</b>			
<b>5.1</b>	Status of environmental clearances			
<b>5.2</b>	Clearance required from the local development agencies			
<b>5.3</b>	Other support required from the local development agencies			
<b>6</b>	<b>Government of Rwanda support</b>			
<b>6.1</b>	Viability gap funding, if required			
<b>6.2</b>	Government of Rwanda guarantees being sought, if any			
<b>7</b>	<b>PPP Agreement</b>			
<b>7.1</b>	Term sheet of the proposed PPP Agreement			
<b>8</b>	<b>Criteria for short listing at RFQ stage</b>			
<b>8.2</b>	Indicate the criteria for short listing			

***PPP Agreement***

<b>SN</b>	<b>Particulars (Tick “✓” the applicable box)</b>	<b>Provided</b>	<b>Not Provided</b>	<b>Not Applicable</b>
<b>1</b>	<b>General</b>			

<b>SN</b>	<b>Particulars (Tick “✓” the applicable box)</b>	<b>Provided</b>	<b>Not Provided</b>	<b>Not Applicable</b>
<b>1.1</b>	Scope of the project			
<b>1.2</b>	Nature of concession to be granted			
<b>1.3</b>	Period of concession and justification for fixing the period			
<b>1.4</b>	Estimated capital cost			
<b>1.5</b>	Likely construction period			
<b>1.6</b>	Conditions precedent, if any, for the concession to be effective			
<b>1.7</b>	Status of land acquisition			
<b>2</b>	<b>Construction and O&amp;M</b>			
<b>2.1</b>	Monitoring of construction; whether an independent agency/engineer is contemplated			
<b>2.2</b>	Minimum standards of operation and maintenance			
<b>2.3</b>	Penalties for violation of prescribed O&M standards			
<b>2.4</b>	Safety-related provisions			
<b>2.5</b>	Environment-related provisions			
<b>3</b>	<b>Financial</b>			
<b>3.1</b>	Maximum period for achieving financial close			
<b>3.2</b>	Nature and extent of capital grant/subsidy contemplated			
<b>3.3</b>	Bidding parameters (capital subsidy or other parameter)			
<b>3.4</b>	Provisions for change of scope and the financial burden thereof			
<b>3.5</b>	Concession fee, if any, payable by the Concessionaire			

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<b>SN</b>	<b>Particulars (Tick “✓” the applicable box)</b>	<b>Provided</b>	<b>Not Provided</b>	<b>Not Applicable</b>
<b>3.6</b>	User charges/fee to be collected by the Concessionaire			
<b>3.7</b>	Indicate how the user fee is to be determined; the legal provisions in support of user fee; and the extent and nature of indexation for inflation			
<b>3.8</b>	Provisions, if any, for mitigating the risk of lower revenue collection			
<b>3.9</b>	Provisions relating to escrow account, if any			

*Commercial case*

<b>SN</b>	<b>Particulars (Tick “✓” the applicable box)</b>	<b>Yes</b>	<b>No</b>	<b>Unsure</b>
<b>1</b>	Is the project expected to achieve a satisfactory rate of return?			
	Explanatory notes			
<b>2</b>	Are projected financing ratios satisfactory?			
	Explanatory notes			
<b>3</b>	Is the project likely to achieve value for money (VFM)?			
	Explanatory notes			
<b>4</b>	Are the project outputs, services levels and performance requirements clearly specified?			
	Explanatory notes			
<b>5</b>	Are credible proposed financing arrangements in place?			
	Explanatory notes			

*Risk management strategy*

<b>SN</b>	<b>Particulars (Tick “✓” the applicable box)</b>	<b>Yes</b>	<b>No</b>	<b>Unsure</b>
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6	Have all major risks been identified, understood and evaluated?			
	Explanatory notes			
7	Are risk management plans in place?			
	Explanatory notes			
8	Are approvals processes and clearances being addressed?			
	Explanatory notes			
9	Are environmental and social issues being addressed?			
	Explanatory notes			
10	Are land acquisition issues being addressed?			
	Explanatory notes			

***Readiness for procurement***

<b>SN</b>	<b>Particulars (Tick “✓” the applicable box)</b>	<b>Yes</b>	<b>No</b>	<b>Unsure</b>
11	Is a robust procurement strategy in place, including for the management of deviations?			
	Explanatory notes			
12	Has the proposed procurement procedure been evaluated and, in particular, its compliance with legal requirements confirmed?			
	Explanatory notes			
13	Has stakeholder consultation confirmed the acceptability of the project and procurement strategy?			
	Explanatory notes			
14	Is there adequate knowledge of the market and potential suppliers?			
	Explanatory notes			

15	Is progress in obtaining permits, approvals and clearances satisfactory and in accordance with the procurement strategy?			
	Explanatory notes			

***Procurement plan***

<b>SN</b>	<b>Particulars (Tick “✓” the applicable box)</b>	<b>Yes</b>	<b>No</b>	<b>Unsure</b>
16	Are the project budget and timetable under control?			
	Explanatory notes			
17	Does the project team have adequate skills and resources, including appropriate external advisors?			
	Explanatory notes			
18	Have remaining project activities been timetabled, defined and resourced?			
	Explanatory notes			

***Overall assessment***

<b>SN</b>	<b>Particulars</b>	<b>Details (Tick “✓” the applicable box)</b>			
1	Is the project documentation complete?	Complete	Partially Complete	Not Provided	Recommendations
	Explanatory notes				

***Capacity of the Contracting Authority to manage and monitor the contract***

<b>SN</b>	<b>Particulars (Tick “✓” the applicable box)</b>	<b>Yes</b>	<b>No</b>	<b>Unsure</b>
-----------	--	------------	-----------	---------------

1	Has a suitable contract management team been formed?			
	Explanatory notes			
2	Have financial resources been secured for managing and monitoring the contract during the current budgetary cycle?			
	Explanatory notes			
3	Has a contract management plan been prepared?			
	Explanatory notes			
4	Do the plans for contract management and monitoring meet the guiding principles for contract management (simple and focused, low cost, conducive to partnership, clear dispute resolution procedures)?			
	Explanatory notes			
5	Has a monitoring schedule been developed?			
	Explanatory notes			
6	Are training and capacity building opportunities available to the contract management personnel?			
	Explanatory notes			
7	Are plans in place to respond to difficulties or problems in contract implementation as they arise?			
	Explanatory notes			

**Annexure 5 – Model template for testing impact of FCCL**

**Suggested format for long term fiscal planning**

<b>Revenues</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>...</b>	<b>2034</b>
Publicly financed infrastructure								
Revenues from users								
PPPs								
Revenue-sharing receipts								
Fixed PPP fees								
Total revenue								
<b>Spending</b>								
Publicly financed infrastructure								
Public investment								
Operations and maintenance								
PPPs								
Payments for services								
Subsidies								
Revenue guarantees								
Other contingent liabilities								
Total spending								
Net cash flow								

**Economic Balance Sheet**

<b>Present value of revenues</b>	<b>March 30<sup>th</sup> 2016</b>	<b>March 30<sup>th</sup> 2017</b>
Publicly financed infrastructure		
Tolls on public roads		
Concessions		
Revenue-sharing receipts		
Fixed concession fees		
Total revenue	-	-
<b>Present value of spending</b>		
Publicly financed infrastructure		
Public investment		
Operations and maintenance		
Concessions		
Payments for services		
Subsidies		
Revenue guarantees		
Other contingent liabilities		



Total spending		
Net present value		

**Format for comparison between PPP and traditional provision**

<b>PPP</b>					
<b>Year</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>...</b>	<b>2030</b>
<b>Government Payments to the PPP Company</b>					
Availability Payment					
Operation Payment					
Equipment Payment					
<b>Subtotal</b>					
<b>Government expenses</b>					
Inputs Expenses					
Salaries					
Taxes					
Start up expenses					
<b>Subtotal</b>					
<b>TOTAL PPP</b>					
<b>Traditional Procurement</b>					
<b>Year</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>		<b>2030</b>
Construction Investment					
Equipment Investment					
Start Up Expenses					
Operation					
Salaries					
Inputs					
Correction for Quality					
<b>TOTAL Traditional Procurement</b>					

**Format for summary of Value for money**

<b>Net Present Value of total costs</b>	
PPP	
Traditional Procurement	
<b>Gap</b>	
<b>Net Present Values of operational cost</b>	
PPP	
Traditional Procurement	
<b>Gap</b>	

Long Term Fiscal Planning Tool

	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	
<b>Parameters</b>	GDP rate of growth estimations			Long term GDP rate of growth																		
GDP rate of growth																						
Budget rate of growth																						
Budget/GDP	80 %																					
	Current budget																					
<b>Budget availability</b>																						
<b>Commitments</b>																						
<b>Sectorial commitments</b>	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	
Salaries																						
Operational supplies																						
Investment																						
Debt payments																						
<b>Subtotal</b>																						
<b>PPP commitments signed</b>																						
<u>Government payments</u>																						
Project A																						
Project B																						
Project C																						
Project D																						
Subtotal																						
<u>Contract supervision cost</u>																						
Project A																						
Project B																						
Project C																						
Project D																						
Subtotal																						

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<u>Contract renegotiations/additional works</u>																				
Project A N°1																				
Project A N°2																				
Project C N°1																				
Project C N°2																				
Project C N°3																				
Project D N°1																				
Subtotal																				
<u>Legal disputes settled</u>																				
Project B																				
Project C																				
Subtotal																				
<u>Guarantees granted</u>																				
Project A																				
Project B																				
Project C																				
Project D																				
Subtotal																				
<b>Subtotal signed commitments</b>																				
<b>Future commitments</b>																				
<u>Government payments</u>																				
Project E																				
Project F																				
Project G																				
Project H																				
Subtotal																				
<u>Contract supervision cost</u>																				
Project E																				
Project F																				
Project G																				
Project H																				
Subtotal																				
<u>Contract renegotiations/additional works</u>																				

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Project A N°3																				
Project B N°1																				
Project D N°2																				
Subtotal																				
<b>Subtotal future commitments</b>																				
<b>Provisions</b>																				
<u>Legal disputes to be settled</u>																				
Project B																				
Project C																				
Subtotal																				
<u>Guarantees to be granted</u>																				
Project E																				
Project F																				
Project G																				
Project H																				
Subtotal																				
<u>Contract renegotiations/additional works</u>																				
Project E																				
Project F																				
Project G																				
Project H																				
Subtotal																				
<b>Subtotal Provisions</b>																				
<b>TOTAL</b>																				

## Annexure 6 – Structure for bid documents

### Requests for qualification template

The Contracting Authority shall use the following template for preparing the Request for Qualification

<p>REQUEST FOR QUALIFICATION</p> <p>Name of Project</p> <p>Government of Rwanda / CA Name and Logo</p> <p>Date</p> <p>Document version / reference number</p>
<b>Reference / invitation letter</b>
<b>Notices / disclaimer</b>
<b>Table of content</b>
<b>Definitions</b>
<b>Procuring agency, including:</b> <ul style="list-style-type: none"><li>• Key contact details</li></ul>
<b>Name and location of the project</b>
<b>Project description, including:</b> <ul style="list-style-type: none"><li>• Description of the project</li><li>• General scope of the future private partner</li><li>• Indication of the proposed bidding process</li></ul>
<b>Pre-qualification terms and procedures, including:</b> <ul style="list-style-type: none"><li>• Qualification criteria and thresholds</li><li>• Firm, consortium and/or other requirements</li><li>• Submission procedures</li><li>• Conflicts of interest and/or other limits on participation</li><li>• Pre-qualification costs</li><li>• Clarification requests</li></ul>
<b>Pre-qualification application requirements, including:</b> <ul style="list-style-type: none"><li>• Language of documentation</li></ul>

<ul style="list-style-type: none"><li>• Documents making up the application</li><li>• Format of applications</li></ul>
<b>Evaluation procedures, including:</b> <ul style="list-style-type: none"><li>• Receipt of applications</li><li>• Clarification requests</li><li>• Opening and evaluation procedures</li><li>• Shortlisting</li></ul>
<b>Procedures for evaluation</b>
<b>RFQ timeframes</b>
<b>Annexes, including:</b> <ul style="list-style-type: none"><li>• Any required formats for applications</li><li>• Any required formats for application support documents</li><li>• Project information memorandum (if intended for release)</li></ul>

**Request for Proposal Template**

The Contracting Authority shall use the following template for preparing the Request for Proposal

<p>REQUEST FOR PROPOSAL</p> <p>Name of Project</p> <p>Government of Rwanda / CA Name and Logo</p> <p>Date</p> <p>Document version / reference number</p>
<b>Reference / invitation letter</b>
<b>Notices / disclaimer</b>
<b>Table of content</b>
<b>Definitions</b>
<b>Procuring agency, including:</b> <ul style="list-style-type: none"><li>• Key contact details</li></ul>

**Project brief**

**Instruction to bidders, including:**

- General bidding rules, including:
  - Eligibility and compliance requirements
  - Bid security requirements and forms (if applicable)
  - Corporate structure of the successful bidder
  - Consortium requirements
  - Role of CA
  - Timetables for bidding
  - Bid dates and responsibility for delays
  - Bidders due diligence
  - Clarifications process
  - Additional information
  - Draft project agreement
  - Costs of bidding language, format and signing
  - Bid clarifications
  - Bid validity
  - Annulment of bidding process
  - Confidentiality
  - Corrupt or fraudulent practices
  - Notifications
- Project information and bidders due diligence
  - Name and location of the project and identify the procuring agency
  - Content and conditions of access and use of the data room
  - Site or other inspections
  - Draft project agreement (or in Annex)
- Bid requirements
  - Compliance requirements
  - Detailed guidance on the format, preparation, content and structure of the technical and financial bids



- Submission of bids
  - Procedures for submission and receipt of technical and financial proposals
- Proposal opening, evaluation and selection of preferred bidder
  - Procedures for the opening and evaluation of proposals
  - Evaluation criteria and methodology, including inter alia weighting principle, evaluation formula, assumptions to use in the bid preparation
- Conditions precedent to commercial close
  - Conditions precedent
  - Other

**Terms of reference, including:**

- Detailed project description
- Obligations of partners
- Output specification and/or key performance indicators, and/or minimum performance specifications and standards; also the required level of service (LOS) or availability to deliver
- Delivery schedule
- Regulatory and legal requirements to comply with in terms of employment, environment, safety/security, etc.
- A draft copy of the project agreement and its technical annexes

**Annexes, including:**

- Any required formats for submissions or support documents
- Draft project agreement (if not included in main TOR)
- Checklists
- Etc.

## Annexure 7 – Structure of the bid evaluation report

<p><b>Introduction:</b></p> <ol style="list-style-type: none"><li>i. Project background</li><li>ii. Bid process details – evaluation criteria, approach, committees</li><li>iii. Details on conforming and alternate bids received</li></ol>
<p><b>Assessment of affordability</b></p> <p>This section should compare the identified institutional budget for the project against the cost of each proposal to identify the affordability of each proposal.</p>
<p><b>Assessment of value for money</b></p> <p>An assessment of the initial value for money of the project was carried out in the feasibility stage where the cost of the public sector comparator was set against the cost of a PPP reference project to arrive at the initial value for money assessment. At the bid evaluation stage, the individual proposals were matched up with the Public Sector Comparator (PSC) to arrive at the actual value for money. In determining the value for money it is important to ensure that the risk adjusted values of the proposals are compared to the PSC and the underlying assumptions are in line with those of the PSC.</p>
<p><b>Assessment of risk transfer</b></p> <p>Details the risk matrix of the bidders with particular focus on the risk matrix of the preferred bidder</p>
<p><b>Bid deficiencies</b></p> <p>The deficiencies in the preferred bid which were identified by the project selection committee during the process of bid evaluation should be specified. Details on the nature of such deficiencies and anticipated difficulties in resolving them should be provided.</p>
<p><b>BAFO</b></p> <p>In case the CA had decided to undertake the BAFO process, a report on the same with the level of detailing provided in the RFP analysis should be included.</p>
<p><b>Negotiation plan</b></p> <p>This section should lay down the negotiation strategy of the CA, the members of the negotiation team and the key issues likely to arise in the process.</p>
<p><b>Concluding remarks</b></p> <p>Concluding remarks of the contracting authority</p>

## **Annexure 8 – Templates for project reporting during construction and during operation**

### **1. Contents of Monthly Progress Report**

The monthly progress report shall be submitted during the given Project construction phase. This report shall contain following details:

- a) Compliance of the conditions precedent and achievement of financial close within the period specified in the PPP Agreement;
- b) Adherence to the time lines and other obligations specified in the PPP Agreement;
- c) Streamlining of, and adherence to, the reporting procedures between the Private Partner and the Contracting Authority, which may also include a Management Information System;
- d) Assessment of performance against laid down performance standards;
- e) Remedial measures and action plan for curing defaults, especially when performance standards are not fulfilled;
- f) Imposition of penalties in the event of default;
- g) Levy and collection of user charges based on approved principles;
- h) Progress of on-going disputes and arbitration proceedings, if any;
- i) Compliance with the instructions of the Contracting Authority or Independent Engineer, as the case may be.

### **2. Contents of Yearly Progress Report**

The yearly progress report shall be submitted during the given Project construction and operations phases. This report shall, in particular, focus on any non-compliance relating to the provisions of the relevant contract, especially in terms of the standards of performance or loss to the public exchequer and the users. It shall clearly indicate the steps required to be taken by the Contracting Authority in accordance with the provisions of the PPP Agreement clause. This report shall contain, including other details, following:

- a) Compliance report regarding implementation of the PPP Project as per the provisions of the PPP Agreement;
- b) An 'Exception Report' highlighting issues where remedial action is to be taken for enforcing the provisions of the respective PPP Agreement ;
- c) A review of the grievances of users and the manner and extent of their resolution;
- d) Matters affecting the interests of the public exchequer in relation to the expenditures and revenues arising from the Candidate Project.

### **5. Risk register**

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Risk register shall be maintained during PPP agreement implementation phase. The CA must notify the SC on any deviations from agreed terms.

CONTRACTING AUTHORITY:	Ministry of Roads and Transport			From the Risk Evaluation Matrix								
	Risk Definition and Detail	Base Cost Kshs	Basis of Base cost	Risk Likelihood		Risk Impact	Composite Rank (Likelihood & Impact)	Risk Color Code	Risk Allocation G(ovt), (P)riv (S)hared	Total Expected Cost of Risk Eventuation	Risk Cost as a percentage of Project Value	Risk Mitigation taken/to be taken
Risk Event / Type				Level	%ge	Level	[1 to 16]					
PHASE I Pre-Project Commencement										0.0%		
Award of Tender								G		0.0%		

## **Annexure 9 – The functioning of the Technical Committee**

### **1. Composition of the TC**

The Technical Committee (TC) is a project specific committee made up of representatives from RDB, MINECOFIN, MININFRA and relevant CA to facilitate review and approval activities in the PPP process. The TC will be formed by RDB after the PIC approves the project to be developed through the PPP procurement route. The TC will act as a working group and will support the RDB/ PPP Unit to evaluate the project through various stages of the PPP process and facilitate review and approvals. The TC for a project will comprise the following members:

- TC lead, member from PPP Unit nominated by Head, SID/ PPP Unit;
- Nominated members from RDB with requisite skills in finance, procurement and legal;
- Project Officer from the CA;
- Nominated Member from MINECOFIN;
- Nominated Member from MININFRA; and
- Any other member from other GoR's stakeholders connected with the PPP Project.

### **2. Roles and responsibilities of the TC**

The TC is responsible for evaluating all project related documents submitted to the RDB as per the PPP process. It will be specifically responsible for:

- Reviewing and recommending the PPP prefeasibility study;
- Reviewing and recommending the PPP feasibility study;
- Reviewing and approving bid documents ;
- Reviewing and recommending the shortlisted bidders for the Project;
- Reviewing and recommending the preferred bidder for the project;
- Conducting negotiations with the private partner for the PPP project

The members of the TC will be collectively responsible discharging their roles and responsibilities as mentioned above. The members of the TC will also review the project/ sections of the project based on their subject expertise, recommend and facilitate decision making from their respective departments. The members of the TC shall be authorized by their respective institutions to undertake review of the project on behalf of their institutions, provide reviews, recommendations and approvals. It will be the responsibility of the member of the TC to undertake all processes within his/her institution to provide the review and approval on the Project. The TC lead will ensure that recommendations from the members of the TC are compiled to provide a complete view on the PPP project.

### **3. Convening the Technical Committee meetings**

The meeting of the Technical Committee shall be convened any time it is considered necessary upon invitation by the TC Lead or in his/her absence by any personnel from RDB who is a member of the TC.

### **4. Notification of Technical Committee meeting**

Any meeting of the Technical Committee shall be convened through a written notification or via email at least seven (7) days before the date of the meeting except if all members provide for a meeting to be held at less than seven days' notice. The notification must also state the time, date, location, and agenda of the meeting and shall be accompanied by all the available relevant documentation to be discussed at the meeting.

### **5. Quorum for the meetings of the Technical Committee**

The quorum required for the meetings of the Technical Committee is at least two-thirds (2/3) of its members. When such a number is not reached, the meeting is deferred to another date agreed upon by the members present. If the meeting is convened for the second-time due to lack of quorum, the provisions of this section 5 of shall apply.

### **6. Request for experts**

The Technical Committee may invite in its meeting any persons required to give advice on a given item on the agenda. Those persons shall be chosen for their specific skills but shall not have the right to vote at the meeting.

### **7. Adoption of Technical Committee resolutions**

Resolutions of the Technical Committee shall be validly taken when at least two-thirds (2/3) of its members are present at the meeting. The decisions of the committee are taken by unanimous resolution of the members present.

Members of the Technical Committee shall not be represented in the meetings by other persons. However, members of the Technical Committee who are unable to attend a meeting may provide their opinions by electronic communication or any other means approved by the Committee.

Technical Committee resolutions shall be signed by its members present at the end of the meeting. The original copy of the report of the Technical Committee meeting shall be kept in Rwanda Development Board and a copy of it shall be transmitted to other members of the Committee

**Annexure 10 – Template for Code of Conduct & Declaration of Interest of bid evaluation panel**

**Draft code of conduct for bid evaluation panel members**

*Background*

Every member of a bid evaluation panel appointed by an institution to act on behalf of the institution in the adjudication and evaluation of these bids is required to sign this code of conduct before receiving bids. In addition, each member has to sign the attached declaration of interest form once the institution has announced and recorded the identities of the bidding parties.

*The aims of the code*

This code of conduct does not address every possible situation that may arise. It also cannot serve as a substitute for the responsibility of the accounting officer/authority and the bid evaluation panel members to:

- exercise sound judgment
- act with exceptional standards of moral integrity
- abide by all applicable laws.

This code of conduct is intended to:

- confirm the member's commitment to all its prescripts
- guide members who are faced with ethical dilemmas in an increasingly complex operational environment
- provide a reference for disciplinary and/or prosecuting procedures if a member is found guilty of fraud or corruption
- serve as a public commitment by the institution to the highest standards of ethical and professional conduct in the evaluation of bids.

*Breaching the code*

A member will be found guilty of breaching the code of conduct if he or she

- contravenes or fails to comply with any provision in it
- when declaring interests, willfully gives incorrect or misleading details.

In these cases, a member will be liable for disciplinary action in terms of relevant public service regulations and may also be liable for criminal prosecution. The accounting officer/authority, acting on his or her own or on a complaint by any person, may investigate any alleged breach of this code by a member of an evaluation panel and may withdraw the member from the panel during the investigation.

*Definitions*

**“Family member”** means a parent, sibling, child or spouse of a member;

“**Member**” means a person appointed by the accounting officer/authority to a bid evaluation panel, either as the chairperson, or as an ordinary member or secretariat, for purposes of conducting the evaluation of either transaction advisor bids or PPP bids as a representative of the institution;

“**Privileged or confidential information**” means any information:

- determined by the institution to be privileged or confidential
- discussed in closed session by the bid evaluation panel
- which if disclosed would violate a person's right to privacy
- declared to be privileged, confidential or secret in terms of any law

*Code of conduct*

I, [insert name of member of bid evaluation panel], acting in my capacity as member of the [insert name of institution] evaluation panel for the adjudication and evaluation of bids for transaction advisors/private parties (delete which is not applicable) under [insert tender number] hereby undertake:

1. to act at all times with fidelity, honesty, integrity and in the best interests of the state and the general public it serves
2. to diligently perform the duties of a member efficiently, effectively and strictly in accordance with the rules of bidding and bid evaluation, as set out in the bid documentation and according to all relevant instructions given by the institution
3. to properly prepare for and attend each meeting of the bid evaluation panel, and failing this to withdraw as a member
4. to act at all times in accordance with the relevant legislation and regulations, including Ministry of Finance regulations, and directives given by the institution
5. to recognise the public's right to access to information in the interests of administrative justice
7. to take the utmost care in ensuring that there is reasonable protection of the records of the institution and all bid documentation
8. not to misuse the position or privileges of a member, or privileged or confidential information obtained as a member
9. to carry out duties with the skill and care expected from a person of knowledge and experience, and to exercise due judgment
10. not to unfairly discriminate against any bidder on the grounds of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language
11. not to abuse any position in the public service to promote or prejudice the interest of any political party or interest group



12. to give the Auditor-General all the information and explanations it requires to carry out its functions
13. to report to the appropriate authorities any case of fraud, corruption, nepotism, maladministration and any other acts which constitute an offence or which are prejudicial to the public interest, arising during the bid evaluation panel proceedings
14. to declare, diligently, accurately and honestly in the declaration of interest, all personal and/or business interests that I or a family member may have in any business of any bidder, and to willingly abide by any decision of the chairperson of the bid evaluation panel or the accounting officer/authority to withdraw as a member of the panel because of this to be open and honest about all decisions and actions taken regarding the bid evaluation, and to give clear reasons for these, which can be accurately recorded
16. not to make any dishonest allegations about any bidder
17. not to make any false or misleading entries into the records of the bid evaluation panel
18. to make no contractual commitments related to the bid, to any bidding party, on behalf of the institution
19. to proactively protect privileged or confidential information of the bid evaluation panel from theft, unauthorized disclosure or inappropriate use, and specifically:
  - 19.1. not to respond to any queries relating to the bid evaluation on behalf of the institution, unless expressly authorized in writing by the accounting officer/authority to do so
  - 19.2. not to speak to or correspond carelessly with any person (fellow member, colleague, friend, family member or otherwise) on any matter related to the bid evaluation
20. not to request, solicit or accept any reward, gift or favour in return for voting or not voting in a particular way on any matter, or for disclosing privileged or confidential information
21. not to accept or agree later to accept, any 'kickbacks' in the form of money, favours, inappropriate gifts or anything else of value from a member of the public, government, a political or social movement, or any stakeholder or potential stakeholder which is or may be viewed as aimed at influencing or directing my evaluation of the bids
22. to disclose immediately to the chairperson or the accounting officer/authority any attempted inducement or offers of perks that may be construed as aimed at influencing or directing the evaluation of the bids
23. to report to the chairperson of the panel any invitations to any kind of entertainment by any party that may be construed as being associated in any way with the outcome of the bid evaluation
24. not to vote at, attend or participate in any other way in any meeting or hearing in relation to any matter before the bid evaluation panel, if any interest prevents me from carrying out my member functions in a fair, unbiased and proper way in accordance with this code of conduct.

25. That, the breach of this Code of Conduct or any provisions of the Public Procurement Act, 2004 shall not preclude the institution of criminal proceedings pursuant to applicable law against me.

Signed: \_\_\_\_\_

Date:

\_\_\_\_\_  
[Signature of member] [Insert date]

Witnessed: \_\_\_\_\_

[Signature of witness]

### **Draft Declaration of Interest**

All members of the bid evaluation panel for PPP projects are required to complete and sign the following declaration of interest.

The table below shows the full list of all the bidders, including the names of all the consortium members of each bid, who have responded to the [insert name of institution] call for a PPP bid for [insert name and tender number of project].

As a member of the bid evaluation panel, you are required to declare any interest, as far as you are aware that you have, in any of the bidders and their consortium member companies.

An interest includes, but is not limited to:

- your shareholding in a bidding company or any of its consortium member companies. Clearly indicate the extent of your shareholding and links to this bid.
- family members, friends or associates employed by a bidding company or any of its consortium members. Clearly indicate the extent of this relationship and links to this bid.
- family members, friends or associates' shareholding in a bidding company or any of its consortium members. Clearly indicate the extent of their shareholding and links to this bid.
- family members, friends or associates contracted to provide services to a bidding company or any of its consortium members. Clearly indicate these individuals' links to this bid.
- you, or any of your family members, friends or associates receiving, or in agreement to receive, any gifts, favors, payments, sponsorships, subsidies, or any other benefits from any bidders or any members of any of the consortia, within the last 12 months of the date of this declaration.
- any other personal interest that may reasonably be deemed relevant to protecting the integrity of the bid evaluation.

Name of Bidders	Interest (Y/N)	Extent of Interest
<details of bidders and consortia members>		

I, [insert name of member], a member of the bid evaluation panel for the [insert name of institution and name and number of project] declare that the above information is true and correct to the best of my knowledge. I declare further that in the event of any such interests arising during the course of bid evaluation, these shall be promptly and accurately declared in writing to the accounting officer/authority

Signed: \_\_\_\_\_

Date:

\_\_\_\_\_

[Signature of member] [Insert date]

Witnessed: \_\_\_\_\_

[Signature of witness]

## **Annexure 11 – Probity**

Probity describes the concept of procedural integrity, using transparent and accountable tendering and transaction processes that will withstand external or independent scrutiny. It derives from the accepted principle that in its commercial transactions, government's actions must be fair and equitable to all participants, be seen to be so, and be capable of withstanding independent scrutiny on behalf of the public. Government and public officials must be able to demonstrate high levels of integrity in the process while pursuing value-for-money outcomes and meeting the public interest.

For a government transaction to achieve fully accountable procedural integrity, the various elements of the transaction process must be able to withstand close examination through each phase of the transaction. The elements of a commercial transaction that need to be considered from a probity perspective include:

- **Personnel:** Everyone involved in shaping the transaction and influencing the final outcomes should be independent and impartial. The project team has responsibility to ensure that government requirements for probity outcomes are met.
- **Communications:** Effective communication protocols should be in place to establish equitable and respectful dialogue between parties, and to ensure that all bidders receive 'equal' communication and are not lead in a preferred direction.
- **Information:** All project documents and information, whether government or private sector, should be managed on an equitable and respectful basis.
- **Confidentiality:** Commercial-in-confidence and intellectual property material should be treated appropriately to ensure that bidders' competitive advantage is protected.

It should be noted that probity of itself does not prohibit communications with bidders but aims to ensure they receive equitable treatment and access to information.

Common probity concerns with an interactive tender process include:

- How do we ensure that there is no crossover of ideas from one bidder to another? For example, if the state is presented with a good design solution from one bidder, it is important to ensure that this idea or intellectual property is not disclosed to other bidders, inadvertently or otherwise.
- How do we ensure that each bidder has equal opportunity and access to personnel and information provided by the state?
- How do we ensure that bidders are not misled about various design aspects? Clarity is essential when the state project team makes positive or negative comments.

These concerns should be addressed through mechanisms such as:

- Involvement of a probity practitioner (an adviser) in the project and the planning of the interactive tender process;
- The probity practitioner's attendance at the initial workshops/sessions and any subsequent workshops as deemed necessary in consultation with the project team;

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- Protocols and procedures for both state participants and bidders, in place before the series of workshops/sessions begins;
- Ensuring the security and confidentiality of intellectual property and proprietary information, to the extent allowed by law and government policy; and
- Chairing of the session/s by the project director (in-charge) and minutes of the meetings taken, including questions and answers.